



**OWNER-CONTRACTOR CONSTRUCTION AGREEMENT**

THIS AGREEMENT, is entered into as of \_\_\_\_\_, (“Effective Date”) between the **LONE STAR COLLEGE SYSTEM** (hereinafter, "LSCS"), a public junior college pursuant to Section 130.004 of the Texas Education Code, and \_\_\_\_\_ (hereinafter referred to as “CONTRACTOR”).

WITNESSETH, that for and in consideration of the promises of the parties herein and the mutual covenants set forth in this contract, LSCS and the CONTRACTOR agree to be legally bound as follows:

**1. SCOPE OF WORK.** CONTRACTOR agrees to commence and complete all services set forth in or reasonable inferred from \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

attached hereto as Exhibit A. All work shall be completed in accordance with the construction documents or guidelines provided by LSCS, if any.

**2. TERM.** This contract shall become effective on the issuance of an LSCS Purchase Order and shall continue in effect until \_\_\_\_\_. CONTRACTOR shall achieve Substantial Completion no later than \_\_\_\_\_. Substantial completion is the stage in the project where the work is sufficiently complete in accordance with the construction documents so LSCS can utilize the work for its intended use.

**3. COMPENSATION.** For the services to be provided hereunder LSCS shall pay CONTRACTOR a fee not to exceed \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_). This amount includes an owner’s allowance of \$\_\_\_\_\_. This allowance is for LSCS to cover unexpected expenses incurred during the project. Any cost associated with a change proposal request will be paid out of the owner’s allowance.

Payments will be made progressively within forty-five (45) days of receipt of proper invoices.

**4. INSURANCE.** Prior to commencing performance, the CONTRACTOR shall secure, and maintain in force until final acceptance of the project and through any warranty period, the following kinds of insurance in the following amounts:

<u>TYPE OF COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workers Compensation	Statutory Limit-State of Texas
Employer's Liability	
Bodily Injury By Accident	\$100,000 Ea. Accident
Bodily Injury By Disease	\$100,000 Ea. Employee
Commercial General Liability (Bodily Injury and Property Damage) (Combined Single Limit)	\$1,000,000 Ea Occurrence/ \$1,000,000 Aggregate Include Products/Completed Operations \$50,000 Fire Damage \$5,000 Medical Expense
Commercial Auto Liability	\$1,000,000 Combined Single Limit
Professional Liability	\$1,000,000 (if applicable)
Umbrella	\$5,000,000

LSCS shall, with the exception of Workers Compensation, Employers Liability and Professional Liability, be named as an additional insured under each of the above policies, and the Contractor and its insurer agree to provide a complete waiver of subrogation against LSCS. Certificates of Insurance evidencing the proper coverage must be provided and accepted by LSCS prior to the start of work and any change in coverage must be reported 30 days prior to taking effect. The insurance carrier must be an "A-" by "A.M. Best" (or a nationally known insurance rating company acceptable to LSCS. The CONTRACTOR'S policy must also state that it is primary over any other available insurance that it may carry.

- 5. TERMINATION.** LSCS reserves and has the right and privilege of canceling, suspending, or abandoning the execution of all or any service in connection with this Agreement at any time upon three (3) days written notice to the CONTRACTOR. The CONTRACTOR may terminate this Agreement upon thirty (30) days written notice to LSCS should LSCS substantially fail to perform their obligations under the terms of this Agreement. LSCS'S liability in case of early termination will be limited to paying for the work already performed and the expenses already incurred as of the date of the termination, less any and all foreseen or unforeseen damages sustained by LSCS as a result of any default or consequence of termination.
- 6. CHANGE ORDERS.** If there is a change in the project scope, a change order or change proposal request must be approved by the LSCS Project Director and engineer before CONTRACTOR proceeds with the changes. The change order or change proposal request must state the change in the project scope, the amount of the adjustment in the contract sum, if any, and the extent of the adjustment in the contract time, if any.

**7. DISPUTE RESOLUTION PROCESS.** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by LSCS and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

- a. Contractor's claims for breach of this contract that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to [for the System, the Chancellor; for component institutions, the President] or his/her designee. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of System and Contractor otherwise entitled to notice under the Parties' contract. Compliance by Contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.
- b. The contested case process provided in Chapter 2260, subchapter C, of the Government Code is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by System if the Parties are unable to resolve their disputes under subparagraph (a) of this paragraph.
- c. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by LSCS nor any other conduct of any representative of LSCS relating to the contract shall be considered a waiver of sovereign immunity to suit.
- d. The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Attorney General of the State of Texas pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. These rules are found at 1 T.A.C. Part 3 Chapter 68.
- e. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Contractor, in whole or in part.

**8. DEFAULT AND LIQUIDATED DAMAGES. IF THE CONTRACTOR FAILS TO PROSECUTE THE WORK WITH DILIGENCE AND FAILS TO COMPLETE THE WORK WITHIN THE SPECIFIED TIME OF THIS CONTRACT, OR ANY EXTENSION THEREOF, INCLUDING THE CORRECTION OF DEFICIENCIES FOUND DURING THE FINAL INSPECTION, CONTRACTOR SHALL PAY TO LSCS AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY, THE SUM OF \$ \_\_\_\_\_ PER DAY FOR EACH CALENDAR DAY BEYOND THE COMPLETION DATES SET FORTH HEREIN.**

**9. DELAY.** Should the CONTRACTOR be delayed in the prosecution or completion of the WORK by other contractors employed by LSCS, or by any damage caused by fire, weather conditions or casualty for which the CONTRACTOR is not responsible, or by general strikes or lockouts caused by reason of any or all of the causes aforesaid, an

extended period shall be determined and fixed at the sole discretion of LSCS; but no such allowance shall be made unless a claim therefore is presented in writing to LSCS within ten (10) days of the occurrence of such delay. Contract time may be extended only through a written change order.

**10. NOTICES.** All notices, requests, demands and other communications required hereunder shall be written and shall be deemed to have been personally delivered or when deposited in a regularly maintained receptacle of the United States Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to:

**To LSCS at:**

**To Contractor at:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**11. INDEMNITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS LSCS, ITS AGENTS, EMPLOYEES, OFFICERS, ADMINISTRATORS, COMPONENT INSTITUTIONS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ALL CLAIMS, INJURIES, DAMAGES, LOSSES, COSTS, EXPENSES AND LIABILITY, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, WHETHER ARISING BEFORE, DURING OR AFTER COMPLETION OF THE CONTRACTOR'S WORK, CAUSED BY OR ARISING OUT OF OR RESULTING FROM PERFORMANCE OF WORK, OF WHATEVER NATURE, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE (1) IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION BY THE CONTRACTOR, AND SUBCONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, BUT ONLY TO THAT EXTENT, PROPORTION OR DEGREE THAT THE CLAIMS, DAMAGES, LOSSES AND EXPENSES ARE ATTRIBUTABLE TO THE ACT OR OMISSION OF THE CONTRACTOR OR ITS SUBCONTRACTORS.

**12. CORPORATE FRANCHISE TAX.** CONTRACTOR (or "Seller" or other designation of contracting party) certifies that, upon the effective date of this agreement, either (1) it is not delinquent in payment of State of Texas corporate franchise taxes, or (2) it is not subject to the payment of such taxes. Contractor (or other designation of contracting party) agrees that any false statement with respect to franchise tax status shall be a material

breach hereof, and LSCS shall be entitled to terminate this Agreement upon written notice thereof to Contractor (or other designation).

**13. COMPLIANCE.** CONTRACTOR agrees to abide by and perform the work under this Contract in compliance with all applicable City, State of Texas and Federal laws, rules, regulations and policies. While on the premises of the System or its components, CONTRACTOR agrees to abide by the policies and procedures of the System and its components relative to conduct on its premises.

**14. PROJECT CLOSE OUT.** If applicable, before the final payment is processed, CONTRACTOR shall develop a punch list with LSCS and LSCS's engineer, if any. CONTRACTOR shall complete all punch list items within \_\_\_\_\_ days from the date of the punch walk. After punch list items are confirmed to be complete by LSCS and LSCS's engineer, if any. CONTRACTOR shall supply LSCS with an affidavit from each subcontractor stating that all invoices incurred as a result of this project have been paid in full. CONTRACTOR shall provide LSCS with a notarized affidavit stating that all materials used on this project do not contain asbestos, lead, and PCB.

**15. WARRANTIES.** CONTRACTOR warrants to LSCS that all materials and equipment furnished and installed under this contract will be new and of good quality unless otherwise permitted by the construction documents. The work shall be free from defects and the work shall conform with the requirements of the construction documents. Work not conforming to these requirements shall be considered defective and shall be replaced by the CONTRACTOR at the CONTRACTOR's expense promptly upon receiving notice by LSCS. Before final payment is released, CONTRACTOR shall provide all written warranties as required in the specifications.

**16. RETAINAGE.** If applicable, the CONTRACTOR shall receive payment less \_\_\_\_\_ percent (\_\_\_\_%) retainage. The retained payment shall be released by LSCS upon completion of all work, acceptance, issuance of full certificate of occupancy and receipt by LSCS of all certified close out documents as provided in the Contract Documents. The retainage amount will be deposited in an interest bearing account in accordance with applicable law.

**17. MISCELLANEOUS.**

- a. It is CONTRACTOR's responsibility to notify LSCS in writing two days prior to using any materials producing toxic odors or fumes which could affect users in the project area or areas connected through a common HVAC system. If CONTRACTOR does not notify LSCS in accordance with this agreement, CONTRACTOR will be solely responsible for any damages or claims that result from the release of the toxic odors or fumes.
- b. CONTRACTOR shall supply Material Safety Data Sheets (MSDS) to LSCS on all materials used on this project prior to the arrival of the materials on the job site.

- c. CONTRACTOR shall procure all necessary building permits required for performance under this agreement and shall post permits at project site as required by law. CONTRACTOR shall obtain all required inspections.
- d. Contractor hereby certifies that if any of its principals or owners is a child support obligor, he/she is no more than 30 days delinquent in paying child support.
- e. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against LSCS. It is agreed by LSCS and the CONTRACTOR that this Agreement is intended for the benefit of LSCS and CONTRACTOR only and not for the benefit of architects, engineers, contractors, subcontractors, including suppliers or any of their employees or agents, or any other person.
- f. This Agreement shall be governed by the laws of the State of Texas. Its validity and the interpretation of its terms shall be governed by the laws of the State of Texas. If any provisions of this contract are determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and conditions hereof shall remain in full force and effect. It is mutually agreed by the parties that if litigation should arise concerning all or any part of this contract, venue shall lie in Harris County, Texas.
- g. CONTRACTOR agrees that all work on the project pursuant to this contract shall be at the CONTRACTOR's exclusive risk until final and complete acceptance thereof by LSCS, and in case of any loss or damage thereto, in whole or in part, prior to such acceptance, except for that caused by the negligence of LSCS, such loss and/or damage shall be borne by the CONTRACTOR.
- h. CONTRACTOR agrees to secure a payment and/or a performance bond in accordance with Texas Government Code §2253.021 upon execution of this contract. The Payment & Performance Bonds must be delivered to LSCS within 10 days after CONTRACTOR receives the purchase order for the services from LSCS. The services cannot be manned until the Payment & Performance Bonds have been received by LSCS. The bonding company must be acceptable to LSCS.
- i. This instrument, Exhibit A, and LSCS Uniform General and Supplementary General Conditions (if applicable) which is attached hereto and incorporated herein as if copied verbatim contains the entire Agreement between LSCS and the CONTRACTOR and can be modified only by written instrument signed by authorized representatives of LSCS and the CONTRACTOR. In the case of any conflict between these documents, this instrument will govern.

Executed in the year and day referenced above.

**Lone Star College System:** \_\_\_\_\_:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name                      Title

\_\_\_\_\_  
Printed Name                      Title

**Note: Modification of this Form requires approval of OGC**