

**CONTRACTOR'S AGREEMENT**

**Project Number: [Project Number]**

**Project Name: [Project Name]**

**Notice:**

Throughout this document and documents attached by reference, whenever the term “Utah Valley University,” “UVU,” “Owner,” or “State of Utah” is used it shall refer to Utah Valley University; And, whenever the term “Project Manager,” “UVU Project Manager,” or “Owner’s Representative” is used it shall refer to the Utah Valley University official Representative. And, whenever the term “Purchasing” is used it shall refer to Utah Valley University Procurement Services.

**THIS CONTRACTOR'S AGREEMENT**, made and entered into this [Day] day of [Month], [Year], by and between Utah Valley University, hereafter referred to as UVU (or “AGENCY”) and [Contractor], incorporated in the State of [State] and authorized to do business in the State of Utah, hereinafter referred to as "Contractor", whose address is [Contractor Address].

WITNESSETH: WHEREAS, the AGENCY intends to have Work performed at

Address: [Location].

WHEREAS, Contractor agrees to perform the Work for the sum stated herein.

NOW, THEREFORE, the AGENCY and Contractor for the consideration provided in this Contractor's Agreement, agree as follows:

# ARTICLE 1. SCOPE OF WORK.

The Work to be performed shall be in accordance with the Contract Documents prepared by [Preparer] and entitled “[Name of Document].”

The State of Utah, Utah Valley University (UVU) “General Conditions” dated Aug 31, 2012 and Supplemental General Conditions dated Aug 31, 2012 (also referred to as “General Conditions”) on file at Procurement Services (Utah Valley University, 936 W 400 S, Orem, UT 84058) and available on the Procurement Services website (<http://uvu.edu/procurement>), are hereby incorporated by reference as part of this Agreement and are included in the specifications for this Project. All terms used in this Contractor's Agreement shall be as defined in the Contract Documents, and in particular, the General Conditions.

The Contractor Agrees to furnish labor, materials and equipment to complete the Work as required in the Contract Documents which are hereby incorporated by reference. It is understood and agreed by the parties hereto that all Work shall be performed as required in the Contract Documents and shall be subject to inspection and approval of the AGENCY or its authorized representative. The relationship of the Contractor to the AGENCY hereunder is that of an independent Contractor.

# ARTICLE 2. CONTRACT SUM.

The AGENCY agrees to pay and the Contractor agrees to accept in full performance of this Contractor's Agreement, the sum of [Amount] DOLLARS AND NO CENTS ($[00].00), which is the base bid, and which sum also includes the cost of a 100% Performance Bond and a 100% Payment Bond as well as all insurance requirements of the Contractor. Said bonds have already been posted by the Contractor pursuant to State law. The required proof of insurance certificates has been delivered to the AGENCY in accordance with the General Conditions before the execution of this Contractor's Agreement.

# ARTICLE 3. TIME OF COMPLETION AND DELAY REMEDY.

The Work shall be Substantially Complete by the following date: [Completion Date]. Contractor agrees to pay liquidated damages in the amount of $[Damages] per day for each day after expiration of the Contract Time until the Contractor achieves Substantial Completion in accordance with the Contract Documents, if Contractor's delay makes the damages applicable. The provision for liquidated damages is: (a) to compensate the AGENCY for delay only; (b) is provided for herein because actual damages can not be readily ascertained at the time of execution of this Contractor's Agreement; (c) is not a penalty; and (d) shall not prevent the AGENCY from maintaining Claims for other non-delay damages, such as costs to complete or remedy defective Work.

No action shall be maintained by the Contractor, including its or Subcontractor or suppliers at any tier, against the AGENCY or State of Utah for damages or other claims due to losses attributable to hindrances or delays from any cause whatsoever, including acts and omissions of the AGENCY or its officers, employees or agents, except as expressly provided in the General Conditions. The Contractor may receive a written extension of time, signed by the AGENCY, in which to complete the Work under this Contractor's Agreement in accordance with the General Conditions.

# ARTICLE 4. CONTRACT DOCUMENTS.

The Contract Documents consist of this Contractor's Agreement, the Conditions of the Contract (UVU General Conditions, Supplemental and other Conditions), the Drawings, Specifications, Addenda and Modifications. The Contract Documents shall also include the bidding documents, including the Invitation for Bid/Request for Proposal, Instructions to Bidders/Proposers and the Bid/Proposal, to the extent not in conflict therewith and other documents and oral presentations that are documented as an attachment to the contract.

All such documents are hereby incorporated by reference herein. Any reference in this Contractor's Agreement to certain provisions of the Contract Documents shall in no way be construed as to lessen the importance or applicability of any other provisions of the Contract Documents.

# ARTICLE 5. PAYMENT.

The AGENCY agrees to pay the Contractor from time to time as the Work progresses, but not more than once each month after the date of Notice to Proceed, and only upon Certificate of the A/E for Work performed during the preceding calendar month, ninety-five percent (95%) of the value of the labor performed and ninety-five percent (95%) of the value of materials furnished in place or on the site. The Contractor agrees to furnish to the AGENCY invoices for materials purchased and on the site but not installed, for which the Contractor requests payment and agrees to safeguard and protect such equipment or materials and is responsible for safekeeping thereof and if such be stolen, lost or destroyed, to replace same.

Such evidence of labor performed and materials furnished as the AGENCY may reasonably require shall be supplied by the Contractor at the time of request for Certificate of Payment on account. Materials for which payment has been made cannot be removed from the job site without the AGENCY written approval. Five percent (5%) of the earned amount shall be retained from each monthly payment. The retainage, including any additional retainage imposed and the release of any retainage, shall be in accordance with UCA 13-8-5 as amended. Contractor shall also comply with the requirements of UCA 13-8-5, including restrictions of retainage regarding subcontractors and the distribution of interest earned on the retention proceeds. The AGENCY shall not be responsible for enforcing the Contractor’s obligations under State law in fulfilling the retention law requirements with subcontractors at any tier.

# ARTICLE 6. INDEBTEDNESS.

Before final payment is made, the Contractor must submit evidence satisfactory to the AGENCY that all payrolls, materials bills, subcontracts at any tier and outstanding indebtedness in connection with the Work have been properly paid. Final Payment will be made after receipt of said evidence, final acceptance of the Work by the AGENCY as well as compliance with the applicable provisions of the General Conditions.

Contractor shall respond immediately to any inquiry in writing by the AGENCY as to any concern of financial responsibility and the AGENCY reserves the right to request any waivers, releases or bonds from Contractor in regard to any rights of Subcontractors (including suppliers) at any tier or any third parties prior to any payment by the AGENCY to the Contractor.

# ARTICLE 7. ADDITIONAL WORK.

It is understood and agreed by the parties hereto that no money will be paid to the Contractor for additional labor or materials furnished unless a new contract in writing or a Modification hereof in accordance with the General Conditions and the Contract Documents for such additional labor or materials has been executed. The AGENCY specifically reserves the right to modify or amend this Contractor's Agreement and the total sum due hereunder either by enlarging or restricting the scope of the Work.

# ARTICLE 8. INSPECTIONS.

The Work shall be inspected for acceptance in accordance with the General Conditions.

# ARTICLE 9. DISPUTES.

Any dispute, PRE or Claim between the parties shall be subject to the provisions of the General Conditions. The AGENCY reserves all rights to pursue its rights and remedies as provided in the General Conditions.

# ARTICLE 10. TERMINATION, SUSPENSION OR ABANDONMENT.

This Contractor’s Agreement may be terminated, suspended or abandoned in accordance with the General Conditions.

# ARTICLE 11. RIGHT TO WITHHOLD CERTAIN AMOUNT AND MAKE USE THEREOF.

The AGENCY may withhold from payment to the Contractor such amount as, in the AGENCY’S judgment, may be necessary to pay just claims against the Contractor or Subcontractor at any tier for labor and services rendered and materials furnished in and about the Work. The AGENCY may apply such withheld amounts for the payment of such claims in the AGENCY’S discretion.

In so doing, the AGENCY shall be deemed the agent of Contractor and payment so made by the AGENCY shall be considered as payment made under this Contractor's Agreement by the AGENCY to the Contractor.

The AGENCY shall not be liable to the Contractor for any such payment made in good faith. Such withholdings and payments may be made without prior approval of the Contractor and may be also be prior to any determination as a result of any dispute, PRE, Claim or litigation.

# ARTICLE 12. INDEMNIFICATION.

The Contractor shall comply with the indemnification provisions of the General Conditions.

# ARTICLE 13. SUCCESSORS AND ASSIGNMENT OF CONTRACT.

The AGENCY and Contractor, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement, and to partners, successors, assigns and legal representatives of such other party with respect to all covenants, provisions, rights and responsibilities of this Contractor’s Agreement. The Contractor shall not assign this Contractor’s Agreement without the prior written consent of the AGENCY, nor shall the Contractor assign any moneys due or to become due as well as any rights under this Contractor’s Agreement, without prior written consent of the AGENCY.

# ARTICLE 14. RELATIONSHIP OF THE PARTIES.

The Contractor accepts the relationship of trust and confidence established by this Contractor's Agreement and covenants with the AGENCY to cooperate with the AGENCY and A/E and use the Contractor's best skill, efforts and judgment in furthering the interest of the AGENCY; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best and most expeditious and economic manner consistent with the interests of the AGENCY.

# ARTICLE 15. AUTHORITY TO EXECUTE AND PERFORM AGREEMENT.

Contractor and the AGENCY each represent that the execution of this Contractor's Agreement and the performance thereunder is within their respective duly authorized powers.

# ARTICLE 16. ATTORNEY FEES AND COSTS.

Except as otherwise provided in the dispute resolution provisions of the General Conditions, the prevailing party shall be entitled to reasonable attorney fees and costs incurred in any action in the District Court and/or appellate body to enforce this Contractor's Agreement or recover damages or any other action as a result of a breach thereof.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contractor's Agreement on the day and year stated hereinabove.

 **CONTRACTOR:**

 Signature Date

 Title:

State of \_\_\_\_\_\_\_\_\_\_\_\_\_)

 )

County of \_\_\_\_\_\_\_\_\_\_\_\_\_) Please type/print name clearly

On this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_\_\_, personally appeared before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he (she) is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (title or office) of the firm and that said document was signed by him (her) in behalf of said firm.

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

 **Notary Public**

(SEAL) My Commission Expires \_\_\_\_\_\_\_\_\_

 **UTAH VALLEY UNIVERSITY**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 (Signature) (Date)

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 (Name)

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 (Title)