

# UNT | SYSTEM™

## INDEFINITE DELIVERY INDEFINITE QUANTITY AGREEMENT FOR STRUCTURAL ENGINEERING SERVICES

This Indefinite Delivery Indefinite Quantity Agreement (“IDIQ Agreement”) is entered into by the University of North Texas System (“UNTS” or “Owner”) and **Ponce-Fuess Engineering, LLC**, as of the Effective Date for the Services stated below, in relation to minor construction, repair, rehabilitation, or alteration projects of limited scope, with such Services to be performed on an indefinite delivery indefinite quantity basis as requested by the Owner in accordance with this IDIQ Agreement. The Effective Date of this Agreement shall be the date of last signature by the Parties hereto.

### ARTICLE I BASIC PROVISIONS

Professional Name: **Ponce-Fuess Engineering, LLC**

Services: **Structural Engineering Services**

RFQ Number: **RFQ769-20-947ER**

The terms and conditions of the RFQ are incorporated herein for all purposes.

Effective Date: May 14, 2020

Agreement Term: **Thirty-six (36) Months**

Renewal Term: **Two (2) additional twelve (12) month renewal at the option of the Owner and upon mutual written agreement**

Maximum Cost of Service Order: Not to exceed Three Hundred Thousand (\$300,000.00)

Maximum Value of IDIQ Agreement: Nine Hundred Thousand (\$900,000.00) for the term and any renewal terms

This IDIQ Agreement incorporates by reference the Uniform General Conditions (“UGC”) for all purposes. This IDIQ Agreement supersedes all prior IDIQ Agreements, written or oral, between Professional and Owner and shall constitute the entire agreement and understanding between the parties with respect to the services described herein. In the event of a conflict between the terms and conditions of this IDIQ Agreement, the UGC and the Owner’s RFQ, the terms of this IDIQ Agreement shall control, followed by the terms and conditions of the UGC, then the Owner’s RFQ.

## **ARTICLE II DEFINITIONS**

- 2.1 The terms, words and phrases used in this Agreement and throughout the Contract Documents are in addition to the definitions given in the UGC.
- 2.2 “Service Order” is the contractual instrument issued by Owner to the Professional under this IDIQ Agreement, which sets forth the services to be provided by the Professional on a particular project. Each Service Order issued hereunder shall be in accordance with the form set forth in Exhibit A and shall include a Statement of Work, performance time and negotiated price for such work not to exceed rates in Exhibit B. An individual Service Order shall become in effect, a fixed-price agreement when the Purchase Order and Notice to Proceed (NTP) is issued. The completed NTP authorizes the Professional to begin work under that Service Order.
- 2.3 “Statement of Work” is a description of specific work to be performed by the Professional as negotiated by Owner and Professional, which shall contain sufficient detail to determine the scope of work and services to be provided by the Professional on a particular project and time for performance. The work described in a Statement of Work shall be ordered through an associated Service Order.

## **ARTICLE III SERVICE ORDER PERFORMANCE**

- 3.1 Professional shall furnish all of the services described in a Service Order issued hereunder. All such services shall be in accordance with and shall conform to the type of services requested under the RFQ applicable to this IDIQ Agreement.
- 3.2 The Owner shall provide a NTP to the Professional, in which a date shall be set for commencement of performance of services under a Service Order. The Professional shall complete the work by the date specified in the Service Order. A completion date may be extended by amendment approved in writing by Owner.
- 3.3 No Service Orders may be issued after the expiration of the Agreement Term or any subsequent Renewal Term. For work in progress pursuant to a Service Order placed prior to the expiration of the Agreement or Renewal Terms, or for any unfinished or defective work, or warranty or indemnity obligations, the terms of this IDIQ Agreement shall remain in full force and effect.
- 3.4 The Owner makes no representations regarding the amount or type of services, if any, that the Professional will be asked to provide to Owner during the term of this IDIQ Agreement. It is expressly understood that the Owner is under no obligation to request any services from the Professional and no minimum amount of work is required or contemplated under this IDIQ Agreement. All service requests under this IDIQ Agreement will be made by the Owner on an as-needed basis and shall be subject to future agreement on the scope of the work and the fee as set forth in a Service Order.

**ARTICLE IV  
PROFESSIONAL RESPONSIBILITIES**

- 4.1 Professional agrees to use Professional's best efforts, skill, judgment, and abilities so as to perform services provided under any Service Order in an expeditious and timely manner to the level of competency presently maintained by practicing professionals in the same type of work in the State of Texas.
- 4.2 Professional agrees to perform services provided under any Service Order in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over a project related to such services.
- 4.3 Services provided by Professional under any Service Order shall be reasonably accurate and free from material errors or omissions. Professional shall promptly correct any known or discovered error, omission, or other defect in the reports or other services provided by Professional without any additional cost or expense to Owner.
- 4.4 The Professional shall pay all royalties and license fees, which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by the Professional and used in the performance of the Services.
- 4.5 For each Service Order, Professional shall designate a representative primarily responsible for services provided. The designated representative shall act on behalf of Professional with respect to services provided by Professional and shall be available as required for the benefit of the project and Owner. The designated representative shall not be changed without prior written approval of the Owner, which approval shall not be unreasonably withheld.
- 4.6 Professional must submit a Historically Underutilized Business Subcontracting Plan ("HSP") with every Service Order, which shall be subject to the Owner's approval and compliance efforts. The Professional agrees to comply with the terms of its HSP. No changes to the HSP may be made unless approved in writing by the Owner. While the IDIQ Agreement is in effect and until the expiration of one year after final termination of the IDIQ Agreement and any extension thereto, the Owner may require information from the Professional, and may conduct audits, to assure that the HSP is being followed/was followed.
- 4.7 SUB-CONSULTANTS
- 4.7.1 With the prior written approval of the Owner, the Professional may subcontract such services as the Professional deems necessary to meet its obligations under this IDIQ Agreement or any Service Order. Sub-consultants shall be qualified and experienced in the type of work they will be performing. Owner shall have the right to reject any Sub-consultant, but such right shall not relieve the responsibility of the Professional for his work and the work of the Sub-consultant. Professional expressly assumes such responsibility and liability.
- 4.7.2 The Professional shall be responsible for the management of the Sub-consultants in the performance of their work.

- 4.7.3 If this IDIQ Agreement or any Service Order is terminated, each subcontract agreement shall be assigned by the Professional to the Owner, provided that: (a) this IDIQ Agreement or any Service Order is terminated by the Owner pursuant to Article 9; and (b) the Owner accepts such assignment by notifying the Sub-consultant and the Professional in writing, and assumes all rights and obligations of the Professional pursuant to each subcontract agreement.
- 4.7.4 The Professional agrees to bind every Sub-consultant and material supplier (and require every Sub-consultant to so bind its sub-consultants and material suppliers) to all provisions of this IDIQ Agreement or any Service Order as they apply to the Sub-consultants' or material Suppliers' portions of the Services.

#### 4.8 HAZARDOUS WASTE

- 4.8.1 The Owner represents it has disclosed to the Professional any waste which poses substantial or potential threats to public health or the environment (Hazardous Waste), known by the Owner to exist on or near the Site, if applicable to the Professional's Services. If unanticipated Hazardous Waste is discovered at the Site, the Professional will be entitled to immediately stop work in the affected area. The Professional will promptly report the condition to the Owner and, if required, the governmental agency with jurisdiction. The Professional shall not be obligated to commence or continue Services until any Hazardous Waste discovered at the Site has been removed, rendered harmless, or determined to be harmless by the Owner.
- 4.8.2 The Professional shall not be required to perform any Services relating to or in the area of unanticipated Hazardous Waste without written mutual agreement.
- 4.8.3 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the unanticipated material encountered and whether it is a Hazardous Waste requiring corrective measures or remedial actions. Such measures and actions shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effect upon the Services of the Professional.
- 4.8.4 Material Safety Data Sheets (MSDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Services, whether obtained by the Professional, Subcontractors, or Owner, shall be maintained at the Site by the Professional and made available to the Owner and Subcontractors.
- 4.8.5 During the Professional's performance of the Services, the Professional shall be responsible for the proper handling of all materials brought to the Site by the Professional.

#### 4.9 OWNERSHIP AND REPRODUCTION OF DOCUMENTS

- 4.9.1 All documents, drawings, specifications, electronic data, and information ("Documents") prepared, provided, or procured by the Professional, its Subcontractors, or consultants in performance of this IDIQ Agreement or any Service Order shall become the property of the Owner. The Documents owned by the Owner shall include all additional or confirmatory land survey field notes,

sketches, and related data and additional or confirmatory soils engineering or investigations, samples, calculations, test results and reports, or any other direct services for which the Owner has paid.

- 4.9.2 The Professional shall provide copies of all Documents required in a quantity that is sufficient for Owner's intended purpose.
- 4.9.3 In the event of a termination of this IDIQ Agreement pursuant to Article 9, the Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project.

## **ARTICLE V DESIGN PROFESSIONALS**

- 5.1 This Article 5 is applicable when the Services include providing Construction Documents.
- 5.2 If the final estimated construction cost prepared by the Contractor prior to bid opening, or the lowest and best bid(s) received exceeds the actual amount applied toward the construction of the Project, excluding all contingencies, fees, and administrative costs (Construction Cost Limitation) of the Owner's estimate of the total Project cost from inception to turn-over to the ultimate user, by more than ten percent (10%), the Owner may, at its discretion:
  - 5.2.1 direct the Professional to make changes at no additional expense to the Owner in the Construction Documents to permit re-bidding of the Project within the shortest, reasonable time; or,
  - 5.2.2 direct the Professional to revise the scope or quality, or both, of the Project, so as to reduce the Project construction cost at no additional expense to the Owner; if so directed by the Owner, modify the Construction Documents, as directed, in order to reduce the estimated project construction cost to be within the adjusted construction cost portion of the Project Budget; or,
  - 5.2.3 direct the Professional to assist the Construction Manager in negotiating with lowest and best bidder(s).
- 5.3 When authorized by the Owner in writing, revising previously approved drawings, specifications, or other documents to accommodate changes shall be paid for by the Owner as additional work, provided, however, that no compensation for extra services shall be paid for the following:
  - 5.3.1 revisions directed by the Owner pursuant to paragraphs 5.2;
  - 5.3.2 corrections of design errors or omissions; and
  - 5.3.3 changes initiated by the Professional without Owner's written approval.

**ARTICLE VI  
OWNER RESPONSIBILITIES**

- 6.1 The Owner will furnish available information in regard to the Services to the extent requested by the Professional and provide the Professional with access to the Site as reasonably necessary for the completion of the Professional's services under a Service Order.
- 6.2 Owner hereby expressly reserves the right to designate one or more representatives to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. The Professional shall act only upon instructions from such representatives unless otherwise specifically notified to the contrary.
- 6.3 The Owner shall examine, or cause its representative(s) to examine documents submitted by the Professional and render decisions pertaining thereto promptly or within a reasonable time to avoid unreasonable delay in the progress of the Services provided by the Professional. Review and approval of a document by the Owner shall not waive the contractual responsibility or liability of the Professional.

**ARTICLE VII  
COMPENSATION**

- 7.1 Attached hereto as Exhibit B and incorporated by reference for all purposes, is a schedule of hourly rates by position and a statement of allowable charges and a multiplier for sub-consultant work that shall not be exceeded in order to calculate the fixed price amount to be paid to Professional for Services performed under any Service Order. Pricing shall not change during the entire term of this Agreement, including any extended renewal years.
- 7.2 Unless otherwise stated in the Service Order, following the completion of a Service Order, Professional shall submit an invoice to the Owner and Owner shall make payment to Professional within thirty (30) days of approving the invoice. The Owner shall render payment in accordance with the terms and conditions of its usual and customary Purchase Order.
- 7.3 All invoices submitted for payment must include a HUB Progress Assessment Report (PAR). The PAR should document compliance with the HSP.
- 7.4 Owner shall only be responsible for payment of actual amount of reimbursable expenses permitted as defined below. Professional shall invoice for reimbursement and shall submit receipts necessary to verify reimbursable expenses along with any reimbursement request.
  - 7.4.1 Printing and printing supplies; plotting, photography; renderings; postage; delivery and handling materials at actual expense incurred.
  - 7.4.2 Fees for special consultants, as authorized and approved in advance by Owner for other than structural, mechanical, electrical, and civil engineering services; estimating services; or other services specifically agreed to in writing or included herein.

- 7.4.3 Travel expenditures at State of Texas reimbursement rates; provided further that no reimbursement will be made for travel within the Denton-Dallas-Fort Worth area or that involve less than 150 miles round-trip.
- 7.5 For any said sum paid by Owner, the Professional agrees to accept same in full settlement of all claims for services rendered by Professional under a Service Order.
- 7.6 Owner shall be billed in accordance with Chapter 2251, *Texas Government Code* and interest, if any, on past due payments shall accrue and be paid in accordance with Chapter 2251, *Texas Government Code*. Payee must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur.

## **ARTICLE VIII INDEMNITY AND INSURANCE**

### **8.1 INDEMNITY**

**Professional covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, Owner and its component institutions, the UNTS Board of Regents, and their elected and appointed officials, employees, officers, directors, volunteers, and representatives, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death or property damage, made upon Owner that is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by Professional or Professional's agent, consultant under contract, or another entity over which Professional exercises control. IN THE EVENT PROFESSIONAL AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS IDIQ AGREEMENT.**

- 8.1.1 The provisions of this indemnification are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 8.1.2 Professional shall promptly advise Owner in writing of any claim or demand against Owner or against Professional known to Professional related to or arising out of Professional's activities under this IDIQ Agreement.

### **8.2 INSURANCE**

- 8.2.1 The Professional shall carry such professional liability/errors and omissions insurance, covering Professional's Services provided under this IDIQ Agreement and such other insurance coverage as further described in this Article and as acceptable to and approved by the Owner. The fees for such insurance will be at the expense of the Professional. The insurance policy or policies shall remain in full force during the term of this IDIQ Agreement and for a period of one (1) year

beyond the provision of Professional's Services. A Certificate of Insurance issued by the insuring carrier or carriers, indicating the expiration date, and existence, of the Professional's insurance coverage is required to be provided to Owner prior to commencement or continuation of performance of the Services under this IDIQ Agreement.

8.2.2 The Professional is required to provide professional liability/errors and omissions insurance with a minimum limit of \$1,000,000 each claim and \$2,000,000 aggregate. The Certificate provided to Owner shall indicate the expiration date of the Professional's professional liability/errors and omissions insurance.

8.2.3 For Professional's Services to be performed on premises owned or controlled by Owner, the Professional is required to obtain the following insurance coverage:

Workers' Compensation Employer's Liability	Statutory Limits
Bodily Injury by Accident	\$1,000,000/accident
Bodily Injury by Disease	\$1,000,000 policy limit
Bodily Injury by Disease	\$1,000,000/employee
Commercial General Liability	\$1,000,000/occurrence \$2,000,000 aggregate
Business Auto Liability Combined Single Limit	\$1,000,000/occurrence

Professional shall have Commercial General Liability and Business Auto Liability policies endorsed to include Owner, the University of North Texas, the University of North Texas Health Science Center, the University of North Texas at Dallas, and UNTS Board of Regents as Additional Insured. The Commercial General Liability, Business Auto Liability, Workers' Compensation, and Professional Liability policies shall include a waiver of subrogation in favor of the Owner. All policies shall be primary insurance and non-contributory with respect to any insurance and self-insurance programs maintained by the Owner.

8.2.4 Insurance policies required under this article shall contain a provision that the insurance company must give the Owner written notice transmitted in writing: (a) thirty (30) calendar days before coverage is non-renewed by the insurance company and (b) within ten (10) business days after cancelation of coverage by the insurance company. Prior to start of Services and upon renewal or replacement of the insurance policies, the Professional shall furnish the Owner with certificates of insurance until one year after acceptance of the Services. If any insurance policy required under this article is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Professional will give the Owner prompt written notice upon actual or constructive knowledge of such condition.

8.2.5 The Owner reserves the right to review the insurance requirements set forth in this Article during the term of this IDIQ Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary.



and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Professional.

## **ARTICLE IX TERMINATION**

- 9.1 With or without cause, the Owner reserves and has the right to terminate this IDIQ Agreement or any Service Order issued hereunder or to cancel, suspend or abandon execution of all or any services provided under this IDIQ Agreement or any Service Order at any time upon written notice to the Professional. The Professional may terminate this IDIQ Agreement upon seven (7) days written notice to the Owner only if the Owner substantially fails to perform obligations under Article 6 of this IDIQ Agreement or any Service Order, or fails to timely pay the Professional as required under Article 7, and after adequate written notice is delivered to Owner and Owner has failed to take action within thirty (30) days in order to begin to correct the problem.
- 9.2 In the event of termination, cancellation, suspension, or abandonment of this IDIQ Agreement or any Service Order for reason other than breach of contract, negligence or bad faith on the part of the Professional, the Owner shall pay to the Professional as full payment for services satisfactorily performed and all reimbursable expenses incurred prior to the date of termination, a prorated portion of the sum specified under the terminated IDIQ Agreement or any Service Order, provided Professional delivers to Owner statements, accounts, reports and other materials as required for payment along with all reports, documents and other materials prepared by Professional prior to termination.
- 9.3 For any said sum paid under this Article, the Professional agrees to accept same in full settlement of all claims for services rendered under this IDIQ Agreement.
- 9.4 Within five (5) days of termination, cancellation, suspension, or abandonment of this IDIQ Agreement or any Service Order, the Professional agrees to furnish to the Owner copies of the latest documents prepared by the Professional for any terminated, cancelled, suspended, or abandoned Service Order.
- 9.5 Termination, cancellation, suspension, or abandonment as provided hereunder shall not relieve Professional or any of its employees of liability for violations of this IDIQ Agreement or any Service Order, or any willful, negligent or accidental act or omission of Professional.

## **ARTICLE X MISCELLANEOUS**

- 10.1 Owner may award additional IDIQ Agreements to other Professionals in response to the same RFQ or on the same subject matter upon which this IDIQ Agreement has been awarded. Nothing contained herein limits the right of Owner to issue a request for qualifications for professional services related to individual projects that may also be performed under this IDIQ Agreement.
- 10.2 The Parties each binds itself, its partners, successors, permitted assigns, and legal representatives to the other party of this IDIQ Agreement and to the partners, successors, permitted assigns, and legal representatives of such other party with respect to all

covenants of this IDIQ Agreement. This IDIQ Agreement is a personal service contract for the services described herein, and Professional's rights and responsibilities in this IDIQ Agreement, services or obligations hereunder and/or fees due hereunder, or under any related Service Order may not be assigned, sublet, or transferred to a third party without the prior written approval of Owner.

- 10.3 If the Professional transacts business as an individual, his death or incapacity shall automatically terminate this IDIQ Agreement as of the date of such event, and neither he nor his estate shall have any further right to perform hereunder; and Owner shall pay him or his estate the compensation payable under the IDIQ Agreement for any services rendered prior to such termination. If the Professional is a firm comprised of more than one principal and any one of the members thereof dies or becomes incapacitated and the other members continue to render the services covered herein, the Owner will make payments to those continuing as though there had been no such death or incapacity, and the Owner will not be obliged to take any account of the person who died or became incapacitated or to make any payment to such person or his estate. This provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as the Professional; and if death or incapacity befalls the last one of such group before this contract is fully performed, then the rights shall be as if there had been only one Professional. In any event, notice of the death or incapacity of any principal shall be given to the Owner by any surviving principal within a reasonable time.

#### 10.4 CERTIFICATIONS

10.4.1 Family Code Child Support Certification – Pursuant to Section 231.006, *Texas Family Code*, Professional certifies that it is not ineligible to receive the award of or payments under this IDIQ Agreement and acknowledges that this IDIQ Agreement may be terminated and payment may be withheld if this certification is inaccurate.

10.4.2 Eligibility Certification – Pursuant to Section 2155.004, *Texas Government Code*, Professional certifies that the individual or business entity named in this IDIQ Agreement is not ineligible to receive the award of or payments under this IDIQ Agreement and acknowledges that this IDIQ Agreement may be terminated and payment withheld if this certification is inaccurate.

10.4.3 Franchise Tax Certification – If a corporate or limited liability company, Professional certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

10.4.4 Certification of No Financial Interest – By signature hereon, Professional certifies that no member of the UNTS Board of Regents or Executive Officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this IDIQ Agreement.

- 10.4 This IDIQ Agreement and any Service Order and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted

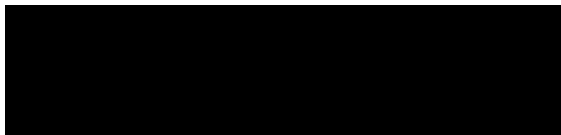
and applied in accordance with and governed by and enforced under the laws of the State of Texas and venue shall be in Denton County, Texas for any legal proceeding pertaining to this IDIQ Agreement in accordance with the *Texas Education Code*.

- 10.5 No delay or omission by either party in exercising any right or power arising from noncompliance or failure of performance by the other party with any of the provisions of this IDIQ Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any term or condition of this IDIQ Agreement shall not be construed as a waiver of any subsequent breach of that or of any other term or condition of the IDIQ Agreement.
- 10.6 Should any term or provision of this IDIQ Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this IDIQ Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.
- 10.7 The titles given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.
- 10.8 Records of Professional's related to the Hourly Rate Schedule, Allowable Charges and Reimbursable Expenses and any payments made under this IDIQ Agreement or any Service Order shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final payment or abandonment of the IDIQ Agreement, unless Owner otherwise instructs Professional in writing.
- 10.9 All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this IDIQ Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner:

Director for System Facilities Administration  
University of North Texas System  
1155 Union Circle #311040  
Denton, Texas 76203-5017

If to Professional:



or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

- 10.10 It is acknowledged and agreed that Professional's services to Owner are unique, which gives Professional a peculiar value to Owner and for the loss of which Owner cannot be reasonably or adequately compensated in damages; accordingly, Professional

acknowledges and agrees that a breach by Professional of the provisions hereof will cause Owner irreparable injury and damage. Professional, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this IDIQ Agreement, but only if Owner is not in breach of this IDIQ Agreement.

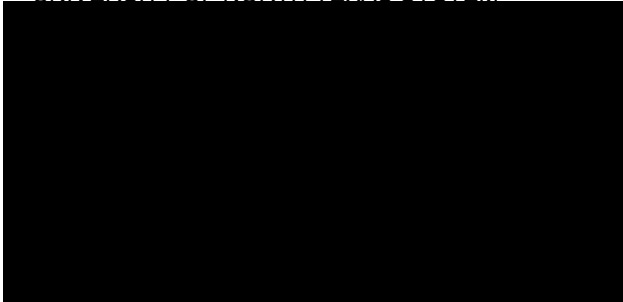
- 10.11 Professional recognizes that it is engaged as an independent contractor and acknowledges that Owner will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Professional, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Professional hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by applicable law.
- 10.12 Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Professional agrees that any payments owing to Professional under this IDIQ Agreement may be applied directly toward any debt or delinquency that Professional owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 10.13 Financial records shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.
- 10.14 Performance by Owner under the IDIQ Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature and/or allocation of funds by the UNTS Board of Regents. If the Texas State Legislature fails to appropriate or allot the necessary funds, or the UNTS Board of Regents fails to allocate the necessary funds, then Owner shall issue written notice to Professional and Owner may terminate the IDIQ Agreement in accordance with Article 9. Professional acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.
- 10.15 All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by the Professional in the performance of Services for Owner, which is not generally known to the public, shall be confidential and the Professional shall not, beginning on the date of first association or communication between Owner and Professional and continuing through the term of this IDIQ Agreement and by Service Order and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Professional's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Professional shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Professional as an independent contractor of Owner in connection with the Project, or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of Owner. Professional shall obtain assurances similar to those contained in this Subparagraph from persons, contractors, and subcontractors

retained by Professional. Professional acknowledges and agrees that a breach by Professional of the provisions hereof will cause Owner irreparable injury and damage. Professional, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this IDIQ Agreement.

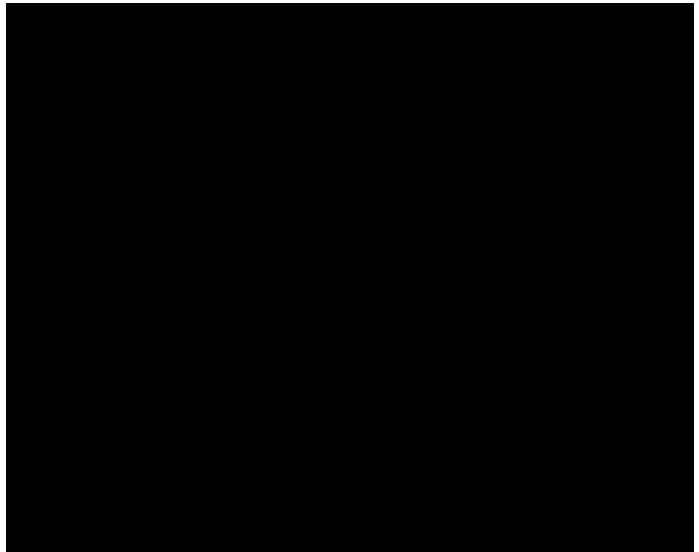
10.16 Owner shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Professional shall make public information available to Owner in an electronic format.

IN WITNESS WHEREOF the parties hereto have executed this IDIQ Agreement in the day and year first above written.

OWNER:  
UNIVERSITY OF NORTH TEXAS SYSTEM



PROFESSIONAL:  
PONCE-FUESS ENGINEERING, LLC



**EXHIBIT A**

**INDEFINITE DELIVERY INDEFINITE QUANTITY**

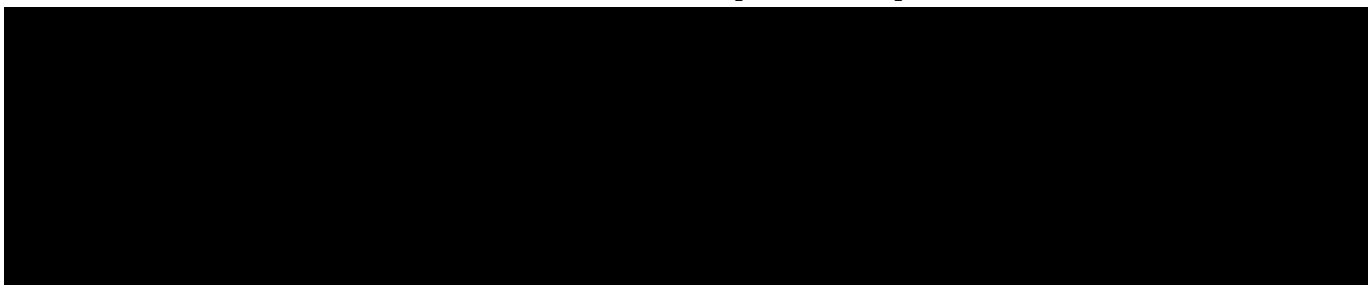
**SERVICE ORDER**

This Professional Services Agreement is governed by all terms and conditions contained in the underlying Indefinite Delivery Indefinite Quantity (IDIQ) Agreement, which was entered into by the University of North Texas System and by **[Firm Name]** effective as of **[Date]** pursuant to **[RFQ Number]**. This IDIQ Service Order shall be effective upon the last date of signature below.

The attached proposal for **[Service & Project Name]**, dated **[Date]** in the amount of **[Amount]** and incorporated herein by reference for all purposes, includes a description of the Statement of Work to be performed under this Service Order (“Work”) and the negotiated fixed-price lump sum to be paid for all Work performed under this Service Order. Professional will correct, at its own cost, any of its services provided under this Service Order, and the services of its consultants, that do not meet the industry standard of care. The completion date for the Work will be **[Date]**. All Work will be completed in accordance with the Historically Underutilized Businesses Subcontracting Plan dated **[Date]**.

UNIVERSITY OF NORTH TEXAS SYSTEM

**[Firm Name]**



**EXHIBIT B**  
**INDEFINITE DELIVERY INDEFINITE QUANTITY**  
**RATE SCHEDULE**

This Professional Services Rate Schedule is governed by all terms and conditions contained in the underlying Indefinite Delivery Indefinite Quantity (IDIQ) Agreement, which was entered into by the University of North Texas System and by ***Ponce-Fuess Engineering, LLC***, effective as of ***May 14, 2020*** pursuant to **RFQ769-20-947ER**. This Rate Schedule shall be effective as of the date of the IDIQ Agreement.

Hourly Rates:

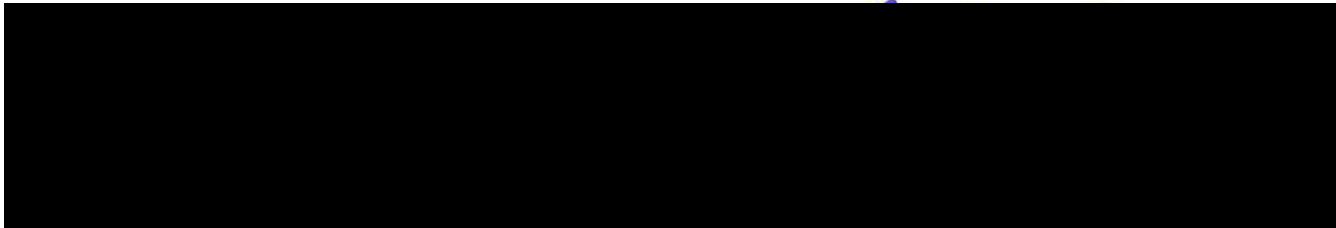
SEE ATTACHED FEE SCHEDULE

Sub-Consultant Multiplier:

Cost +10%

UNIVERSITY OF NORTH TEXAS SYSTEM

PONCE-FUESS ENGINEERING, LLC





PONCE-FUESS  
ENGINEERING

April 13, 2020

[REDACTED]  
Construction Solicitation Coordinator  
System Facilities Planning & Construction  
UNIVERSITY OF NORTH TEXAS SYSTEM  
[REDACTED]

**RE: RFQ769-20-947ER - IDIQ Structural Engineering Services  
Hourly Rate Schedule**

Dear [REDACTED]

As requested, below you will find our current hourly rate schedule and our surcharge for subconsultant services.

<b>Position</b>	<b>Hourly Rate</b>
Principal	\$230.00
Senior Associate	\$165.00
Associate	\$140.00
Senior Project Engineer	\$130.00
Project Engineer	\$120.00
Engineer-in-Training	\$100.00 to \$110.00
Senior CAD/BIM Technician	\$120.00
CAD/BIM Technician	\$100.00
Administrative Assistant	\$75.00

Our proposed surcharge for subconsultant services is **10%**.

Please let me know if you have any questions or if you need additional information. You may reach me via email at [REDACTED]. We are excited and looking forward to working with the University.

Yours truly,

[REDACTED]  
**PONCE-FUESS ENGINEERING, LLC**