

UNAVCO, Inc. Form T-2

General Provisions applicable to Commercial Firm Fixed Price Construction

1. **DEFINITIONS.** As used in this contractual agreement, the below terms shall have the following meanings: (a) "Contractor", "Buyer" or "UNAVCO" means the legal entity purchasing the supplies/services; (b) "Subcontractor," "Seller," "Supplier," or "Vendor" means the legal entity that has entered into this agreement with the Buyer; (c) "Contract," "Subcontract," "Purchase Order," "Agreement," and "Order" (whether capitalized or not) are used interchangeably and refer to this contractual instrument; (d) "Government" means the Government of the United States; and (e) "Prime Contract" means the Government contract, grant or cooperative agreement under which this order is issued.
2. **APPLICABLE LAW.** This Order shall be governed by and construed in accordance with the laws of the State of Colorado.
3. **COMPLIANCE WITH LAWS.** Seller shall comply with all applicable federal, state, and local laws, rules, regulations and orders in effect on the date of this order, including, but not limited to the following, as amended: (a) the Fair Labor Standards Act of 1938; (b) the Federal Occupational Safety and Health Act of 1970 (OSHA); (c) the Toxic Substances Control Act of 1976; (d) the Walsh-Healy Public Contracts Act; and (e) any other federal law concerning labor relations, non-discrimination in employment, minimum wages, overtime compensation, and hours of employment. Seller agrees to indemnify and hold Buyer harmless against any loss or liability due to Seller's violation or non-compliance with such regulations. Upon Buyer's request, Seller shall furnish evidence demonstrating such compliance.
4. **INTERPRETATION OF ORDER.** This Order and any documents incorporated by reference or attached constitute the parties' complete agreement. No prior representations or agreements, either written or oral, shall be considered to change, add to, or contradict it. Any ambiguity, conflict, or inconsistency in this Order shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the parties' intentions at the time of contracting.
5. **ACCEPTANCE OF ORDER.** This Order supercedes all previous written or oral representations and agreements between the parties with respect to the subject matter hereof and becomes a binding agreement, subject to the specific terms and conditions stated herein, upon Seller's acceptance by acknowledgement or commencement of work. This Order contains the entire agreement of the parties and expressly limits acceptance to the terms and conditions stated. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions hereof are objected to and void unless agreed to in writing by the Buyer.
6. **ASSIGNMENT.** This Order shall inure to the benefit of and be binding upon each party hereto and their respective successors and assigns. This Order may not be assigned in whole or part by either party without the prior written consent of the other party, except upon merger, consolidation, sale or other transfer of all or substantially all of the assets of either party. Notwithstanding, the Buyer at the direction of the National Science Foundation may assign this Order to the NSF or to the U. S. Government. Seller shall be given prior written notice of such directed assignment of this Order. In no circumstance shall this Order be construed as binding on the U. S. Government or the National Science Foundation or to imply that U. S. Government or the National Science Foundation are a party to this Order, except to the extent this Agreement is assigned in accordance with this clause.
7. **SETOFF.** Buyer shall have the right at all times to setoff any amount due or payable to Seller hereunder against any claim or charge Buyer may have against Seller.
8. **TAXES.** The price of the supplies/services procured hereunder includes all applicable federal, state, and local taxes and duties unless otherwise stated in this Order.
9. **SELLER CONTACTS WITH BUYER'S CUSTOMER AND OTHER VENDORS.** Buyer shall be responsible for all liaison and communications with Buyer's customer and Buyer's other vendors for the term of this Order. Seller shall not communicate with Buyer's customer or Buyer's other vendors regarding this Order unless authorized to do so by Buyer.
10. **INFORMATION DISCLOSED TO BUYER.** Any information or knowledge Seller discloses to Buyer regarding this Order shall not be deemed confidential or proprietary unless expressly agreed upon by the parties in writing. Any such unpatented information or knowledge shall be acquired by Buyer free of any restrictions.
11. **PAYMENT TERMS.** Unless otherwise specified in this Order, terms of payment are "Net 30 days." If a discount for prompt payment of Seller's invoice is allowed, payment shall be made within the allowable period to qualify for such discount. The time allowable for payment shall begin after both: (a) Buyer's receipt of Seller's invoice, and (b) delivery of acceptable supplies or performance of satisfactory services.
12. **INVOICES.** An itemized invoice shall be submitted to the address shown on the face of the order to the attention of the Accounts Payable Department. The invoice should contain the Order number, description of supplies/services furnished, quantity, unit prices, and total price. Payment of invoices may be delayed pending correction of any errors or omissions.
13. **WORK ON BUYER'S OR BUYER'S CUSTOMER'S PREMISES.** If this Order requires Seller to perform work on Buyer's or Buyer's customer's premises, Seller shall take all reasonable and necessary precautions to prevent any injury to persons or damage to property during the progress of such work. Except to the extent that any injury to persons or damage to property is due to Buyer's or its customer's fault or negligence, Seller agrees to indemnify Buyer and its customer against all loss or liability resulting from any negligent acts or omissions of Seller, its employees, agents, or subcontractors.
14. **PATENT, COPYRIGHT AND TRADEMARK INDEMNITY.** Seller agrees to indemnify, defend, and hold harmless Buyer, its customer, and those for whom Buyer may act as agent, from any costs, expenses, damages, or liability that Buyer may incur as a result of any proceedings charging infringement of any patent, copyright, or trademark by reason of sale or use of any

supplies/services/data furnished by Seller. Seller shall have no liability regarding alleged patent infringement for supplies furnished to Buyer in accordance with Buyer's design specifications.

15. WARRANTIES. Seller warrants that all material and equipment furnished under this Agreement will be new unless otherwise specified, of good quality, in conformance with the requirements of this Agreement, and free from defective workmanship. Warranties shall commence on the date of substantial completion of the Work or designated portion. Seller agrees to correct all construction performed under this Agreement which proves to be defective in workmanship or materials within a period of one year for the date of Substantial Completion, provided Seller has been provided prompt written notice of such defect. THE WARRANTIES CONTAINED IN THIS ARTICLE ARE IN LIEU OF ALL OTHER WARRANTIES EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Notwithstanding anything to the contrary, Seller's responsibility is limited to services specifically performed by Seller for Buyer. Seller will not be responsible for acts of omissions of Buyer, its officers, directors, employees or agents, or any third parties not under the direct control of Buyer. Seller does not warrant any specific results on any kind.
16. PRICE WARRANTY. Seller warrants that the price(s) charged for the supplies/services specified in this order do not exceed the selling price(s) Seller charges its most favored customer for the same or substantially similar items, whether sold to the Government or to any other purchaser, taking into account the quantity purchased and terms and conditions of sale. Seller further agrees that in the event of an announced price reduction prior to complete shipment of supplies or performance of services, said price reduction shall be passed on to Buyer for supplies remaining to be shipped or services still to be performed.
17. CHANGES. Changes in the terms and conditions of this Order may be made only by written agreement of the parties.
18. DISPUTES. Any dispute arising under this order that is not settled by agreement between the parties may be settled by appropriate legal proceedings in any court of competent jurisdiction. Pending final resolution, Seller shall proceed with the performance of this order in accordance with Buyer's instructions.
19. TERMINATION FOR CONVENIENCE. Buyer reserves the right, at any time, in its own best interest, and without liability, to terminate this order in whole or in part, by written notice of termination for convenience to Seller. If the order is so terminated, then, within thirty (30) days following Seller's receipt of the termination notice, Seller shall submit a claim for equitable adjustment. If the termination involves only services, Buyer shall be obligated to pay only for services performed before the termination date, and such costs as reasonable to reimburse Seller for demobilizations, terminations of subcontracts and purchase orders, normal site clean-up and closure, etc. Seller shall provide Buyer any supporting information necessary to document the reasonableness of Seller's termination for convenience claim.
20. TERMINATION FOR DEFAULT. Buyer may, without liability, and in addition to any other rights or remedies provided herein or by law, terminate this order in whole or in part by written notice of default if Seller: (a) fails to deliver the supplies or perform the services within the time specified; (b) fails to make sufficient progress with the work, thereby endangering completion of performance within the time specified; or (c) fails to comply with any of the other instructions, terms, or conditions. Buyer's right to terminate for default may be exercised if Seller does not cure the failure within ten (10) days after receiving Buyer's written notice of such failure. If Buyer terminates this order in whole or in part, Buyer may purchase similar supplies or services from others and Seller shall be liable for any additional costs above the original price for the terminated supplies/services. In the event of a partial termination, Seller shall continue the work not terminated. Seller shall not be liable for any additional costs if failure to perform arises from causes beyond Seller's or Seller's subcontractor's control and without fault or negligence of either of them; provided, however, that the supplies/services to be furnished by Seller's subcontractor (at any tier) were not obtainable from others in time for the Seller to meet the order delivery requirements. Buyer shall pay Seller the order price for any completed supplies/services delivered and accepted. Buyer and Seller shall agree on the amount of payment for manufacturing materials (parts, tools, dies, jigs, planes, drawings, etc.) delivered and accepted by Buyer. Buyer may withhold from any payments due Seller, any sum necessary to protect Buyer against any liability or expenses due to the termination for default. Seller shall provide Buyer any supporting information necessary to document the reasonableness of Seller's termination for default claim.
21. PACKAGING AND PACKING. Seller shall be responsible for properly packing and packaging the supplies in suitable containers for protection during shipment in accordance with transportation regulations and good commercial practice. No additional charge will be allowed for packing and packaging unless specifically agreed to in writing. Seller shall label each package with the corresponding Order number. Seller shall prepare an itemized packing list bearing the Order number, description of items, part number, and quantity shipped for each package. One copy of the packing list shall be placed in the shipping container, one copy shall be forwarded to Buyer, and one copy shall accompany Seller's invoice.
22. PERMITS, FEES AND LICENSES. Except as may be otherwise provided in this order, Seller shall obtain and pay for all drilling permits, fees, and licenses required for the work at no additional charge to Buyer. Buyer shall be responsible for the needed land permitting for the location.
23. FAILURE TO COMPLY. If Seller fails to comply with any Order requirements, Buyer may exercise its option to terminate the order for default or invoke applicable warranties for non-conformance. In lieu of this, however, Buyer may waive the Seller deficiency. In return therefore, Seller agrees to negotiate an equitable reduction in the Order price in such instance.
24. CESSATION OF PRODUCTION. If Seller plans to permanently discontinue production of any of the supplies, parts, support services, etc. provided to Buyer hereunder at any time during the useful life of the equipment, Seller shall give Buyer at least six (6) months advance written notification of such discontinuance and, during this time, agrees to accept Buyer's orders for such items.
25. ORDER OF PRECEDENCE. The following descending order of precedence shall apply in the event of an ambiguity, discrepancy, or conflict in the documents comprising this Order: (a) the Purchase Order Document, (b) the statement of work, (c)

the technical specifications and drawings, (d) these terms and conditions, and (e) any other documents referenced or appended to the Order. However, in the event of an ambiguity, discrepancy, or conflict in any of the technical requirements or drawings, Seller shall immediately consult Buyer for a resolution.

26. INSPECTION/ACCEPTANCE. The Seller shall only invoice for payment costs for work that conform to the requirements of this Order. Buyer reserves the right to inspect or test all services tendered for acceptance. Buyer may require repair or reperformance of nonconforming services at no increase in Order price. Buyer must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
27. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION. Seller certifies that the price(s) proposed in connection with this order have been arrived at independently, without consultation, communication, or agreement with any others for the purpose of restricting competition, and that Seller has not and will not knowingly disclose the price(s), directly or indirectly, to any other offeror.
28. TRANSPORTATION CHARGES. Unless otherwise provided in this Order, transportation charges shall be prepaid and separately invoiced to Buyer. No premium transportation costs will be allowed unless authorized by Buyer.
29. EXCUSABLE DELAYS. The Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Seller shall notify the Buyer in writing within seven (7) days after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Buyer of the cessation of such occurrence. Seller shall be entitled to additional time to perform this Agreement equal to the time of such delay.
30. PUBLIC RELEASE OF INFORMATION. No public release of information, news release, announcement, advertisement, denial or confirmation of this order or the subject matter hereof, shall be made without Buyer's prior written approval.
31. WAIVER OF RIGHTS. Failure of either party to insist on performance of any provision of this order shall not be construed as a waiver of that provision or a waiver of Buyer's or Seller's right to require compliance with such provision in any later instance. If any provision of this order is found to be illegal or unenforceable under law, that provision shall be deleted; however, all other provisions of this order shall not be affected thereby, and shall remain in full force and effect.
32. INSOLVENCY. If Seller ceases to conduct normal business operations (including inability to meet its obligations), or if any proceedings under bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or Seller makes an assignment for the benefit of creditors, Buyer may terminate this order, without liability, except for deliveries previously made and for supplies completed and subsequently delivered in accordance with the terms of the order. In the event of Seller's insolvency, Buyer shall have the right to procure the balance of this order from others without liability.
33. INSURANCE. Seller shall maintain insurance in at least the following amounts: (a) Commercial General Liability: \$250,000 minimum per person and \$500,000 minimum per accident for bodily injury, and \$100,000 property damage; (b) Automobile Insurance: \$250,000 per person and \$500,000 per accident for bodily injury and \$100,000 per accident for property damage; (c) Standard Workmen's Compensation and Employer's Liability Insurance: in the minimum amount of \$100,000, or such greater amount as may be proper under applicable state or federal statutes. Seller shall, if so requested, furnish Buyer certificates of such insurance prior to commencement of work. Upon Seller's failure thereof, Buyer may obtain, at Seller's expense, the insurance coverage required for such compliance. Seller also agrees to provide insurance for all Buyer's property in Seller's possession against loss or damage resulting from fire or theft, including extended coverage, malicious mischief and vandalism. Buyer shall be given at least ten (10) days advance written notice of cancellation of any such insurance. Seller agrees to list Buyer as an additional insured under the Seller's construction contractor's liability insurance policies.
34. NOTICE OF LABOR DISPUTES. When an actual or potential labor dispute or other condition delays or threatens to delay the timely performance of this order, Seller shall immediately notify Buyer in writing. Such notice shall include all relevant information regarding such dispute or other condition. Seller shall insert the essence of this provision in all lower tier procurements issued hereunder.
35. TITLE AND RISK OF LOSS. Unless otherwise provided in this Order, the F.O.B. point shall be the delivery destination indicated in this order, and title to the supplies and risk of loss or damage shall pass to Buyer upon Buyer's acceptance of the supplies regardless of where Buyer takes physical possession. If the F.O.B. point is designated as the Seller's location, then title and risk of loss or damage to the supplies shall pass to Buyer upon Seller's delivery of the supplies to the carrier.
36. QUANTITY. It is Seller's responsibility to furnish the quantity of supplies/services called for in this order. No variation in the quantity specified herein will be accepted as compliance with this order. Buyer reserves the right to return excess shipments at Seller's expense.
37. GRATUITIES. By accepting this Order, Seller warrants that is has not offered or given, and will not offer or give to any employee, agent, or representative of Buyer, a payment, gratuity, or kickback for obtaining or rewarding favorable treatment by Buyer with respect to the terms, conditions, price, performance, or award of an order. A breach of this warranty shall be considered a material breach of the order and may result in Buyer's termination of the order and/or notification to Buyer's customer of such breach.
38. NO EXTRA CHARGES. The total price payable to Seller hereunder for supplies/services furnished in accordance with the procurement requirements shall be stated in this Order. The price shall not be increased to cover any future seller price increases

and shall be inclusive of packing, packaging, and cartage, premium transportation charges, reusable containers, service or carrying charges, permits, fees, and licenses, or any other charges whatsoever unless specifically agreed to in writing by Buyer.

39. LIMITATION OF LIABILITY. Regardless of anything to the contrary in any other part of this Agreement, neither party shall be liable to the other party for any special, indirect, incidental or consequential damages, whether based on contract, extracontractual liability (tort; including negligence) strict liability or otherwise.
40. ACCESS TO PERTINENT RECORDS. If this Order is in excess of the simplified acquisition threshold (currently \$100,000) and is entered into by less than full and open competition the Order shall then include a provision to the effect that Buyer, the Director of the NSF, the Comptroller General of the U.S., or any of their duly authorized representatives shall have access to pertinent records to make audits, examinations, excerpts and transcripts.
41. EQUAL EMPLOYMENT OPPORTUNITY. – All contracts shall contain a provision requiring compliance with E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
42. COPELAND “ANTI-KICKBACK” ACT (18 U.S.C. 874 and 40 U.S.C. 276c) – All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.
43. DAVIS-BACON ACT, as amended (40 U.S.C. 276a to a-7) – When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.
44. CONTRACT WORK HOURS AND SAFETY ACT (40 U.S.C. 327-333) – Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
45. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT – Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
46. CLEAN AIR ACT (42 U.S.C. 7401 et seq.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251 et seq.), as amended – Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). By accepting this Order Seller so agrees.
47. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352) – Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
48. DEBARMENT AND SUSPENSION (E.O.s 12549 and 12689) – No contract shall be made to parties listed on the General Services Administration’s List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, “Debarment and Suspension.” This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contracts declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion

status and that of its principal employees. . By accepting this order Seller certifies that the Seller is not listed as Debarred or Suspended as described herein above.

49. CONSTRUCTION PROCEDURE – Buyers observation or monitoring portions of the work performed under this Order shall not relieve the Seller from its responsibility for performing the work in accordance with the applicable contract documents and the laws of the state where the work is performed. Buyer shall not control nor have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures for constructions, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of Seller personnel. Buyer shall not be responsible for negligent acts or omissions of the Seller.
50. SEVERABILITY - If any provision of this Order is held invalid or unenforceable, the remaining provisions shall be valid and binding on the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.
51. CHANGED CONDITIONS – The discovery of any hazardous waste, substances, pollutants, contaminants, underground obstructions, conditions or utilities on or in the job site which were not brought to the attention of the Seller prior to the date of this Agreement will constitute a materially different site condition entitling the Seller, at its option, to terminate this Agreement (and to receive payment for all work performed up to and including the date of such termination) or to receive payment an equitable adjustment in the Agreement price and time for performance. Seller, however, shall only have the right to terminate if such different site conditions(s) creates additional health and safety risks or requires the Seller to perform work outside the original scope of work or beyond its capabilities.
52. ENTIRE AGREEMENT. This Order constitutes the entire agreement between Buyer and Seller regarding this procurement and supercedes all previous written or oral agreements and commitments. No terms or conditions of sale set forth in Seller's quotation or acknowledgement shall be included as a part hereof, nor shall any prior course of dealing, custom, or usage in the trade supercede or modify any Order provisions. Any subsequent additions, deletions or modifications to this agreement shall not be binding upon the parties unless same are mutually agreed upon and incorporated herein in writing.