

UNIVERSITY of HOUSTON SYSTEM

CONTINUING SERVICES AGREEMENT

FOR [TYPE OF SERVICE]

Contract No.: _____

.....

This CONTINUING SERVICES AGREEMENT FOR [TYPE OF SERVICE] (“Agreement”) is entered into as of [_____, 202____/the last signature date set forth] below (the “Effective Date”) by and between the UNIVERSITY OF HOUSTON SYSTEM, an institution of higher education and an agency of the State of Texas (“Owner”), and [legal name of contracting entity], a [type of legal entity], authorized to do business in the State of Texas (“Service Provider”). Owner and Service Provider may be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Owner requires [type of] services on an as-needed basis for [description of why we need these services];

WHEREAS, on [date] Owner issued request for [qualifications/proposals] no. [number] (the [“RFQ”/“RFP”]) seeking [qualifications/proposals] from qualified firms for the provision of [type of] services;

WHEREAS, Service Provider was [selected on the basis of demonstrated competence and qualification set forth in its statement of qualifications submitted in response to the RFQ/provided the best value].

NOW THEREFORE, Owner and Service Provider agree as follows:

ARTICLE 1 – PARTIES

1.1 **Addresses.** The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

Owner

University of Houston System
Attn: Executive Director,
Facilities Planning and Construction
4211 Elgin Street
Houston, Texas 77204

Contractor

[Name of Service Provider]
Attn: [Service Provider Employee]
[Street]
[City], [State] [Zip]

With a copy to
University of Houston System
Office of the General Counsel
4302 University Drive, Suite 317
Houston, Texas 77204

With a copy to
[Name of Service Provider]
Attn: [Service Provider Employee]
[Street]
[City], [State] [Zip]

1.2 **Table of Contents.** This Agreement consists of the following articles and exhibits:

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B	Project Request Form
C	Project Agreement Form
D	Direct Salary Expense
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1.3 **Parts Incorporated.** The above-described articles and exhibits are attached and incorporated into this Agreement.

1.4 **References.** This Agreement will be interpreted in accordance with the following:

1.4.1 *References to Hereto.* The terms “hereto,” “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement.

1.4.2 *References to Including.* The words “include,” “includes” and “including” are to be construed as meaning “include without limitation,” “includes without limitation” and “including without limitation,” respectively.

1.4.3 *References to Statutes.* Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

1.4.4 *References to Governmental Authorities.* Each reference to an Appropriate Authority is deemed to include a reference to any successor to the Appropriate Authority or any organization or entity which has taken over the functions or responsibilities of the Appropriate Authority. Each reference to a private person that is not an individual is deemed to include a reference to its successors and permitted assigns.

1.4.5 *References to Documents and Standards.* Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

ARTICLE 2 – SERVICES

2.1 **In General.** This Agreement governs the provision of various professional services which, upon the Parties’ mutual consent, will be performed by Service Provider for projects of limited scope (each, a “*Project*”). Service Provider will provide services as requested by Owner on a per-project basis in accordance with the terms of this Agreement and the applicable Project Agreement (as

defined below). The scope of services that may be performed pursuant to this Agreement is set forth in **Exhibit A**.

- 2.2 **Non-Exclusive Engagement.** Nothing in this Agreement precludes Owner from entering into similar agreements with other parties.
- 2.3 **No Minimum Amount of Work.** Owner makes no representation or guarantee regarding the amount or type of services, if any, that Service Provider may be asked to provide to Owner during the Term of this Agreement. Service Provider agrees that Owner is under no obligation to request any services from Service Provider and no minimum amount of work is required or contemplated under this Agreement.
- 2.4 **Project Requests.** If and when Owner requires services, Owner will prepare and email Service Provider a Project Request (“*Project Request*”) identifying the Project and describing, in general, the intended scope and character of the Project, the Owner’s design guidelines (if applicable), the preliminary cost estimate and schedule for the Project, Owner’s objectives in pursuing the Project, the particular characteristics and constraints of the Project, and the Services (as defined below). Owner’s current Project Request form is attached hereto as **Exhibit B**.
- 2.5 **Project Proposal.** In response to a Project Request, Service Provider shall provide Owner a written Project Proposal if Service Provider desires to undertake the Project. The Project Proposal shall, at a minimum, include the following:
 - 2.5.1 A narrative description of Service Provider’s understanding of the Project;
 - 2.5.2 A detailed statement of the basic and additional services anticipated for the Project and reasonably inferable for the completion of the Project in accordance with the Project Request, including a list of deliverables (collectively, the “*Services*”);
 - 2.5.3 A description of particular phases of the Services, if applicable;
 - 2.5.4 The total fee for providing the Services expressed as a lump sum or “not to exceed” (the “*Maximum Contract Sum*”);
 - 2.5.4.1 A breakout to include identification, by line item, the task, the required position classifications and DSE, and the estimated hours;
 - 2.5.4.2 A breakout of all Reimbursable Expenses by line item, to include the estimated quantity of the item required, the unit cost, and an extended “not to exceed” dollar amount therefore; and
 - 2.5.4.3 Frequency of payment (i.e., monthly, milestone, upon completion).
 - 2.5.5 A proposed commencement date and the number of calendar days Service Provider will require to complete the Project;
 - 2.5.6 If Service Provider intends to employ Consultants:
 - 2.5.6.1 a list of all consultants that Service Provider proposes to use in the performance of the Services;

- 2.5.6.2 fee proposal, which may include a schedule of the hourly billing rates for any Consultants' employees that Service Provider proposes to use in the performance of the Services;
 - 2.5.6.3 any qualifications or conditions applicable to the Project Proposal; and
 - 2.5.6.4 a Historically Underutilized Business Subcontracting Plan (an "HSP"). If a Project Agreement is issued, no Historically Underutilized Business listed in the HSP may be replaced, nor may the HSP be modified, without Owner's prior written approval.
- 2.5.7 A summary statement of the total dollar amounts of all previous Project Agreements under this Agreement to date.
- 2.6 **Project Proposal Review; Project Agreement.** Owner shall review the Project Proposal and shall negotiate with Service Provider any necessary changes, clarifications or modifications. Service Provider shall submit a revised Project Proposal incorporating any changes, clarifications or modifications made in the review process. Owner may accept, reject or seek modification of any Project Proposal. If Owner accepts the Project Proposal, Owner will prepare a Project Agreement on Owner's then-current form and present it to Service Provider for execution. Owner's current Project Agreement form is attached hereto as **Exhibit C**. Once the Project Agreement has been executed by authorized signatories of Owner and Service Provider, it becomes a binding *Project Agreement* (herein so called) and is enforceable according to its terms. A Project Agreement is not a binding, enforceable agreement unless and until it is fully executed as set forth below; **Service Provider will not be reimbursed for any costs incurred for Services performed before issuance of a fully binding Project Agreement and the other matters discussed in Section 2.7.** Under no circumstances will Service Provider bill or invoice Owner for any costs incurred in submitting or negotiating this Agreement or a Project Proposal.
- 2.7 **Authorization to Commence Services.** Notwithstanding anything to the contrary contained herein, Service Provider shall take no action upon a Project Request, and **Owner shall not be liable for any costs incurred by Service Provider**, until Service Provider has received (a) a copy of the fully executed Project Agreement and (b) Owner's written notice to proceed which shall refer to a specific Project Agreement by the Owner-assigned project number and specifies a date that Service Provider is authorized to commence the services or any portion thereof in the identified Project Agreement (the "*Notice to Proceed*").
- 2.8 **Changes**
- 2.8.1 Prior to completion of a Project, Project Agreements may be amended at any time in the same manner as they are issued to accommodate for changes in scope. Any amendment to an existing Project Agreement shall be sequentially numbered. By way of example, an amendment to Project Agreement No. 1 shall be effectuated on a Project Agreement numbered "Project Agreement 1.1".
 - 2.8.2 Owner shall not be obligated to make any payment for services provided for any changes in scope to an existing Project Agreement unless and until Owner has authorized the change by issuing a sequentially numbered Project Agreement in the manner set forth in Section 2.8.1.

2.8.3 A Project Agreement may not alter or amend the terms and conditions set forth in this Agreement.

ARTICLE 3 – SERVICE PROVIDER RESPONSIBILITIES

3.1 **Projects.** Service Provider shall be solely responsible for the Services and for completing any Project authorized in accordance with this Agreement on time and budget. In this regard, Service Provider understands that the information delivered by Owner relating to any Project, including that provided in accordance with Sections 5.2.1 through 5.2.2, is provided for Service Provider’s convenience and without warranty or representation as to the accuracy or suitability of the information provided. Service Provider shall manage the Services and administer any Project authorized pursuant to this Agreement and the applicable Project Agreement.

3.2 **Project Manager.** For each Project, Service Provider shall designate a representative reasonably acceptable to Owner primarily responsible for the Services (the “*Project Manager*”). The Project Manager shall act on behalf of Service Provider with respect to all phases of the Services and shall be available as required for the benefit of any Project and Owner. The Project Manager shall be Owner’s primary contact with Service Provider and shall be empowered to bind Service Provider. The Project Manager may not be replaced without Owner’s prior written approval, which approval shall not be unreasonably withheld.

3.3 **Phasing.** Service Provider shall not proceed beyond any previously authorized phase of the services for a Project (each, a “*Phase*”) unless authorized by Owner in writing. Any Services undertaken by Service Provider in violation of the immediately preceding sentence shall be Service Provider’s risk. Applicable phases for a Project shall be identified in the Project Agreement.

3.4 **Subcontracting**

3.4.1 [USE FOR SERVICE PROVIDERS THAT ARE NOT PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES]

For purposes of this Agreement, the term “*Consultant*” means the entity subcontracted by Service Provider and approved by Owner to provide a portion of the architectural, engineering, and or other professional services required under this Agreement.

[USE FOR SERVICE PROVIDERS THAT ARE PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES]

For purposes of this Agreement, the term “*Consultant*” means the entity subcontracted by Service Provider and approved by Owner to provide a portion of the services required under this Agreement.

3.4.2 Owner reserves the right to approve all consultants and the conditions of their employment. Service Provider’s Consultant shall provide competent and complete support Service Provider’s services. Service Provider must provide Owner with a copy of any consultant agreement within 14 days after the receipt of a written request.

3.4.3 Owner may request Service Provider to engage consultants with specialized skills or specific knowledge. Service Provider shall identify consultants demonstrating successful work history in the requested area to the satisfaction of Owner. Upon Owner’s approval,

Service Provider shall be responsible for choosing and contracting with each specialized subcontractor.

- 3.4.4 Prior to entering into any agreement with a potential Consultant, Service Provider must disclose in writing to Owner whether the desired consultant that is related to, affiliated with, partially or wholly owns, or is partially or wholly owned by Service Provider. Service Provider shall not contract with any consultant whether initially, or as a substitute against whom Owner shall be a reasonable objection, including if Service Provider is related to, affiliated with, partially or wholly owns or is partially or wholly owned by the potential consultants.
- 3.4.5 Service Provider shall bind each and every Consultant to the terms of this Agreement and shall ensure that all persons rendering Services under this Agreement are properly licensed and/or registered as required to provide such Services under Applicable Law. Service Provider shall provide to Owner promptly after execution a copy of each executed agreement with its Consultants. Service Provider hereby agrees to include a provision allowing Service Provider to assign the contract to Owner or Owner's designee without the subcontractor's consent in each contract with Consultant for Services. Service Provider shall require all subcontractors to include a similar assignment provision in each and every subcontract Consultant issue for Services. Conformed copies of executed subcontractor subcontracts shall be provided to Owner upon request. Nothing in the foregoing shall create a contractual relation between Owner and any subcontractors.
- 3.4.6 Service shall pay for its consultants' services out of its compensation under a Project Agreement. Owner is not responsible for any consultant fees or costs unless expressly agreed to in writing.

3.5 **Documentation and Schedule**

- 3.5.1 Service Provider shall fully document its Project activities by way of drawings, reports, or other methods appropriate to the Services (the "*Project Documents*") and in accordance with the requirements of this Agreement and any Project Agreement. Service Provider shall deliver review sets of Project Documents to the Owner Contact with adequate lead time for review and comment. The cost of generating and distributing all drawings, plans, specifications, and other documents used by Service Provider and/or its Consultants, and of delivering the documentation required by the immediately preceding sentence (hard, electronic, or otherwise) shall be part of Service Provider's compensation as set forth in the Project Agreement and shall not be separately billed to or paid by Owner.
- 3.5.2 Service Provider will allocate adequate time, personnel and resources to each Project to perform the Services as and when required, and will ensure that all documents bear the seal of the licensed professional who prepared them.
- 3.5.3 Any delay in the completion of a Project resulting from Service Provider's failure to comply with the provisions of this Section 3.5 shall be the sole fault and responsibility of Service Provider.
- 3.5.4 **[OMIT FOR SERVICE PROVIDERS THAT ARE PROVIDING ARCHITECTURAL OR ENGINEERING SERVICE]** Time is of the essence in the performance of this Agreement.

- 3.6 **Correction of Services and Work.** Service Provider’s services shall be reasonably accurate and free from any material errors or omissions. Service Provider shall promptly correct or cause to have corrected any known or discovered error, omission, or other defect in the Services and/or any work performed in accordance with such defective Services without any additional cost or expense to Owner.

ARTICLE 4 – SERVICE PROVIDER REPRESENTATIONS

4.1 **Applicable Laws**

- 4.1.1 Service Provider represents, covenants and acknowledges that it: (a) has the knowledge, ability, skills, resources and license(s) required by Applicable Law to provide the Services in accordance with the terms of this Agreement; (b) does and shall continue, throughout the Term of this Agreement, to comply with all federal and state codes, statutes, ordinances, rules and regulations applicable in the jurisdiction in which the Project is located (collectively, “*Applicable Law*”) specifically including (but not limited to) requirements as to work hours, overtime compensation, nondiscrimination, contingent fees; and (c) is and will remain throughout the Term of this Agreement, duly licensed by the laws of the State of Texas to perform all its obligations contemplated by this Agreement. Service Provider will bear the costs of any fines, penalties or fees resulting from any failure to comply with the foregoing representations, as well as any costs incurred in securing compliance.
- 4.1.2 Owner and Service Provider agree that if, after the Effective Date, there is an unforeseeable enactment or change in any Applicable Law affecting this Agreement, the parties will negotiate in good faith to conform the affected terms of this Agreement with the provisions of such enactment or change.
- 4.1.3 Service Provider shall at all times provide a sufficient number of qualified personnel to accomplish Service Provider’s services within the time limits set forth in each Project Agreement. All persons assigned by Service Provider to performance all or any part of the Services (the “*Staff*”) shall be qualified by training and experience, shall hold licenses, and shall be supervised as required by Applicable Law to perform their assigned tasks. Service Provider shall submit, for Owner’s approval, a team or staffing proposal for the Project, complete with job description, names and previous experience of all proposed Staff. The Project Manager shall be authorized to bind Service Provider with respect to the Project for which he or she shall have been designated.
- 4.2 **Owner Policies and Procedures.** Service Provider shall cause any persons at the Project site (the “*Premises*”) on behalf of or for the benefit of Service Provider (including, but not limited to Consultants and Service Provider’s agents, officers, employees and representatives) to abide by all Owner policies and procedures relative to conduct on the Premises.
- 4.3 **Standard of Care.** Service Provider agrees and acknowledges that Owner is entering into this Agreement in reliance on Service Provider’s represented expertise and special and unique abilities with respect to performing the Services, duties, and obligations under this Agreement. Service Provider shall perform its Services (a) with the professional skill and care ordinarily provided by competent architects practicing under in the same or similar locality and under the same or similar circumstances and professional license; (b) [(USE FOR SERVICE PROVIDERS THAT ARE NOT PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES) the time set forth in each Project is of the essence and is an essential element of the Project Agreement / (USE FOR SERVICE PROVIDERS THAT ARE PROVIDING ARCHITECTURAL OR ENGINEERING

SERVICES)] as expeditiously as is prudent considering the ordinary professional skill and care of a competent]; and (c) 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.

- 4.4 **Good Standing; Authority.** If Service Provider is a business entity, it represents that: (a) it is duly organized, validly existing and in good standing under the laws of the state of its organization; (b) it is authorized and in good standing to conduct business in the State of Texas; (c) it has all necessary power and has received all necessary approvals to execute and perform its obligations in this Agreement; and (d) the individual executing this Agreement on behalf of Service Provider is authorized to do so.

ARTICLE 5 – OWNER RESPONSIBILITIES

- 5.1 **Appointment of Owner Contact.** Owner will appoint an individual (the “*Owner Contact*”) for administration of this Agreement and each Project authorized under this Agreement. Owner may replace the Owner Contact for this Agreement or on any Project upon written notice to Service Provider. Notwithstanding the presence of the Owner Contact at the Premises, Service Provider shall not be released, in whole or in part, from any duty or responsibility under Applicable Law or the terms of this Agreement. The Owner Contact will:

- 5.1.1 Provide an initial budget for a Project, including information as to the space and facility requirements, budget limitations and scheduling;
- 5.1.2 Provide notice to Service Provider if Owner observes or otherwise becomes aware of any fault or defect in a Project or non-conformance of Service Provider’s Services with the requirements of the Agreement and the applicable Project Agreement;
- 5.1.3 Review the Project Documents and the Services (at the completion of each phase of the Services) and provide comments or decisions as expeditiously as possible in the exercise of reasonable diligence for the orderly progress of the Project, it being understood that Service Provider is responsible for the schedule of each Project subject to a Project Agreement, and for delivering Project Documents and scheduling Owner Contact’s review of Services with sufficient lead time to permit Owner Contact’s review. Owner will notify Service Provider in writing of any material error or omission or other defect discovered by Owner, but Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist; and
- 5.1.4 Assist Service Provider in gaining entry to such property as reasonably necessary for Service Provider to perform the Services.

- 5.2 **Additional Owner Responsibilities.** Owner may also:

- 5.2.1 Furnish an existing land survey of the Premises, if any exists and if required by Applicable Law or the Project Agreement;
- 5.2.2 Furnish all necessary structural, mechanical, chemical and other laboratory tests, inspections and reports as required by Applicable Law or the Project Agreement; and
- 5.2.3 Pay the cost of reproduction of any Project Documents in excess of those required by this Agreement and/or a Project Agreement.

ARTICLE 6 – AUTHORIZED CONTRACT SUM

6.1 Maximum Contract Amount.

[USE IF A MAXIMUM AMOUNT IS ASSIGNED PER CONTRACT] The overall maximum value of this Agreement is \$[amount]. The overall maximum value is subject to change based on appropriations and allocations made by Owner’s Board of Regents. Owner is not obligated to issue the entire maximum value of this Agreement.

[USE IF A MAXIMUM AMOUNT IS ASSIGNED PER GROUP OF CONTRACTS] The overall maximum value of this Agreement is [insert approved Board amount]. The overall maximum value is subject to change based on appropriations and allocations made by Owner’s Board of Regents. The maximum value of this Agreement is available for distribution among [] contracts, of which this is one. Owner is not obligated to issue the entire maximum value of this Agreement or the *prorata* estimated amount of compensation to any of the contracts.

- 6.2 **Limit of Appropriation.** Performance by Owner under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature or allocation of funds by Owner’s Board of Regents. If the Texas State Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to Service Provider and Owner may terminate this Agreement without further duty or obligation hereunder. Service Provider acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.

ARTICLE 7 – COMPENSATION

7.1 Maximum Contract Sum

7.1.1 Each Project Agreement will identify the agreed fee for the Project expressed as a lump sum or not-to-exceed amount (the “*Maximum Contract Sum*”). [OPTIONAL] Service Provider acknowledges Owner’s preferences for lump sum agreements.

7.1.1.1 A not-to-exceed amount is an hourly-based agreement which includes the Direct Salary Expense (“*DSE*”) (defined below) set forth in **Exhibit D** multiplied by hours worked by each employee who performs work for the Project for any basic services and/or additional services plus Reimbursable Expenses (defined below) and Consultant Costs (defined below); or

7.1.1.2 A lump sum amount is a fix fee agreement which shall not exceed an estimate of the total of all payment categories set forth in Section 7.1.1.1 when added together.

7.1.1.2.1 [USE FOR SERVICE PROVIDERS THAT **ARE** PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES] Service Provider acknowledges that Owner has adopted fee guidelines included in **Exhibit E** which shall be used when negotiating a lump sum amount for basic services on proposals for the complete design of a project.

7.1.2 “*Direct Salary Expense*” (“*DSE*”) shall mean the actual salaries paid by Service Provider to its employees, expressed on an hourly wage basis, prior to deductions for employment

taxes (such as FICA, Medicare, income tax withholding) and employee-paid benefits, of all personnel, including Service Provider's employees directly engaged on a Project (and performing consultations or research or preparing designs, drawings, and specifications for the Project). The DSE shall exclude mandatory and customary fringe benefits and employee benefits (such as employer-paid insurance, sick leave, holidays, vacation, pensions and similar contributions, or additions such as bonuses or other surplus payments), overhead expense (which includes salaries of bookkeepers, secretaries, clerks, and the like), and profit relating to any Project. A multiplier of **multiplier** shall be applied to the DSE for the purpose of covering such fringe benefits, expense, and profit. The DSE for the personnel directly engaged on the Project (by title) is set forth in **Exhibit D**.

7.2 Consultant Costs

- 7.2.1 "*Consultant Costs*" shall mean the ordinary and reasonable cost of Consultants proposed by Service Provider in a Project Proposal and included in a Project Agreement for services rendered by Consultants under this Agreement. Consultant Costs may include markup of up to **percentage**% to compensate Service Provider for profit, assumption of responsibility, and performance risk related to the use of Consultants. But Consultant Costs may not include any mark-up by the Consultant to its reimbursable expenses and its billing rates.
- 7.2.2 Such fixed payment shall be computed on a Project Agreement to Project Agreement basis and shall not be subject to adjustment unless a Project's scope of services, with respect to the Consultant's services, changes.
- 7.2.3 Invoices for Consultant Costs must be accompanied by appropriate documentation detailing the Consultant's performance contributions for the period of time being invoiced. Any additional documentation reasonably required by Owner shall also be provided by Service Provider. Service Provider shall require Consultants to provide appropriate documentation of costs and expenses incurred in the performance of their services performed in furtherance of a Project Agreement, including but not limited to, a copy of the actual invoice from Consultant to Service Provider.

7.3 Reimbursable Expenses

- 7.3.1 "*Reimbursable Expenses*" are actual, out-of-pocket expenses incurred by Service Provider solely, directly and foreseeably in connection with the Services for a Project subject to a Project Agreement, including:
- 7.3.1.1 Commercially reasonable out-of-pocket expense of reproductions (other than those required as part of the Services, provided by Owner, or for the use of Service Provider and its Consultants); provided, however, all invoices for reproductions that are the obligation of Owner under this Section 7.3.1.1, must be billed directly to Owner, free of state sales taxes, and identified by Service Provider as to the Project name, number and institution;
- 7.3.1.2 If authorized in writing in advance by Owner, the expense of renderings, mock-ups or models for Owner's use; and
- 7.3.1.3 Fees paid for securing approval of Appropriate Authorities.

7.3.1.3.1 “*Appropriate Authority*” or “*Appropriate Authorities*” means any private, local, municipal, county, state, regional or federal authority or agency with jurisdiction over a Project or any portion of it. This term is intended to include those agencies and authorities which may require information or the filing of plans, specifications, etc., in connection with a Project on either a voluntary or compulsory basis, as well as any agencies or authorities providing funds, whether by grant or loan, for the design, development and/or construction of the Project.

7.3.1.4 Postage or delivery charges of a reputable courier service reasonably acceptable to Owner for distribution of drawings and specifications and other items in connection with the Project except for: correspondence between Service Provider and Owner; Service Provider’s in-house work or correspondence; or work or correspondence exchanged between Service Provider and any Consultants.

7.3.1.5 Expense of any additional insurance coverage or limits that exceed those required by this Agreement, when requested by Owner in writing.

7.3.1.6 Transportation and living expenses when traveling in connection with a Project, at Owner’s prior written request and approval, excluding transportation or living expenses within Texas.

7.3.1.6.1 For purposes of clarification, Owner will not reimburse Service Provider for (a) any expenses or mileage incurred within the state of Texas, or (b) any expenses or mileage incurred outside the state of Texas unless Service Provider obtained Owner’s written authorization for the costs prior to incurring them.

7.3.2 Any expense not specifically enumerated above as eligible for reimbursement shall not be reimbursed by Owner. Expenses not allowed for reimbursement include the cost of review documents required to be provided to Owner, telephone charges, FAX service, alcoholic beverages, laundry, valet service, entertainment or any non-Project related items. All tips must be included within the per diem allowances.

7.4 Service Provider’s Obligation to Invoices. Commencing with the calendar month after Service Provider commences performance under a Project Agreement, Service Provider shall deliver to Owner’s Contact for each Project Agreement a monthly invoice of Services performed for the Project in the previous month. Invoices shall be submitted in a format approved by Owner and must, at a minimum, contain the following information:

7.4.1 Project Name, Project Agreement Number, and Account Number assigned by Owner to the Project;

7.4.2 Contract Number assigned by Owner to this Agreement at the top of the first page of this Agreement;

7.4.3 Name of Service Provider’s Project Manager;

7.4.4 Identification of billing period, by calendar month and year, to which the invoice applies;

7.4.5 Itemized description of Services provided;

7.4.5.1 If the Maximum Contract Sum is established as a not-to-exceed amount, all invoices shall also include:

7.4.5.1.1 The names, billing rates and amount of time per task expended by all persons who performed Services for the Project during the billing period;

7.4.5.1.2 Itemized Reimbursement Expenses;

7.4.5.1.3 Consultant Cost, including a copy of the actual invoice and supporting documentation for itemized Reimbursable Expenses.

7.4.6 Completion status of Project by percentage;

7.4.7 Total amount invoiced for the calendar month;

7.4.8 Total amount of prior invoices and Maximum Contract Sum; and

7.4.9 Copy of all receipts in support of any Reimbursable Expenses invoiced.

7.5 Payment. Payment, including its timing, is governed by Chapter 2251 of the Texas Government Code. For purposes of Texas Government Code § 2251.021(a)(2), the date the performance of Service is completed is the date when the Owner Contact approves the invoice; provided, however, Owner Contact shall not approve payment of any amounts that would, when added to past payments, make the percentage of the Maximum Contract Sum paid exceed the completion status (see Section 7.4.6) of a Project. No payment by Owner shall constitute or be construed as final acceptance or approval of any Services or as a release of Service Provider's obligations or liabilities with respect to Services.

7.6 Exceptions to Owner's Payment Obligation. Regardless of any other provision of this Agreement, Owner shall not make any payment on an invoice if any of the following conditions exist:

7.6.1 The requested payment includes Services not performed in accordance with this Agreement; provided, however, payment shall be made for the balance of the Services that are performed in accordance with this Agreement;

7.6.2 The total of Service Provider's invoices exceed the Maximum Contract Sum or Owner, in its good faith judgment, determines that the unpaid balance of the Maximum Compensation Amount is insufficient to complete the Project;

7.6.3 Service Provider has failed to make payments promptly to Consultant or other third parties in connection with the Project;

7.6.4 Service Provider becomes insolvent, makes a general assignment of its rights or obligations for the benefit of its creditors, or voluntarily or involuntarily files for protection under the bankruptcy laws;

7.6.5 Service Provider fails to obtain, maintain or renew insurance coverage as required by this Agreement; or

7.6.6 Service Provider is otherwise in breach or default under any Project Agreement or this Agreement.

7.7 **Final Payment and Release.** The acceptance of final payment under a Project Agreement shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Service Provider or Service Provider's successors have or may have against Owner pursuant to the Project Agreement and this Agreement except those claims specifically identified in writing by Service Provider as unsettled at the time of the final request for payment.

ARTICLE 8 – TERM; RENEWALS; TERMINATION

8.1 Term

8.1.1 The term of this Agreement will begin on the Effective Date and remain in effect for a period of [number] years (“*Initial Term*”).

8.1.2 Owner will have the right to extend the Term for up to [number] additional [number]-year renewal terms (each a “*Renewal Term*”) on written notice to Service Provider not less than 30 days prior to the expiration of the then-current Term. For purposes of this Section, Owner’s Associate Vice Chancellor/Associate President of Facilities/Construction Management has the authority to send written notice effectuating an extension.

8.1.3 The Initial Term and any Renewal Terms may be referred to collectively herein the “*Term*.”

8.1.4 No additional Project Agreements may be issued after expiration of this Agreement; however, for any Project Agreement issued prior to the expiration of this Agreement, Service Provider shall complete the work unless otherwise notified by Owner in writing.

8.2 Termination

8.2.2 Termination for Cause by Owner

8.2.2.1 If Service Provider defaults under this Agreement, Owner may either terminate this Agreement or allow Service Provider to cure the default as provided below. Owner's right to terminate this Agreement for Service Provider's default is cumulative of all rights and remedies which exist now or in the future. Default by Service Provider occurs if:

8.2.2.1.1 Service Provider fails to perform any of its duties under this Agreement;

8.2.2.1.2 Service Provider becomes insolvent;

8.2.2.1.3 all or a substantial part of Service Provider’s assets are assigned for the benefit of its creditors; or

8.2.2.1.4 a receiver or trustee is appointed for Service Provider.

8.2.2.2 If a default occurs, Owner may, but is not obligated to, deliver a written notice to Service Provider describing the default and the termination date. Owner, at its sole

option, may extend the termination date to a later date. If Owner allows Service Provider to cure the default and Service Provider does so to Owner's satisfaction before the termination date, then the termination is ineffective. If Service Provider does not cure the default before the termination date, then Owner may terminate this Agreement on the termination date, at no further obligation of Owner.

8.2.2.3 To effect final termination, Owner must notify Service Provider in writing. After receiving the notice, Service Provider shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

8.2.2.4 For purposes of this Section, Owner's Associate Vice Chancellor/Associate President of Facilities/Construction Management has the authority to send written notice effectuating termination.

8.2.3 Termination for Cause by Service Provider. Service Provider may terminate its performance under this Agreement only if Owner defaults and fails to cure the default after receiving written notice of it. Default by Owner occurs if Owner fails to perform one or more of its material duties under this Agreement. If a default occurs and Service Provider wishes to terminate the Agreement, then Service Provider must deliver a written notice to Owner describing the default and the proposed termination date. The date must be at least 30 days after Owner receives the notice. Service Provider, at its sole option, may extend the proposed termination date to a later date. If Owner cures the default before the proposed termination date, then the proposed termination is ineffective. If Owner does not cure the default before the proposed termination date, then Service Provider may terminate its performance under this Agreement on the termination date.

8.2.4 Termination for Convenience by Owner

8.2.4.1 Owner may terminate this Agreement at any time by giving 30 days written notice to Service Provider. Owner's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

8.2.4.2 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE SERVICE PROVIDER'S ONLY REMEDIES FOR OWNER'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. SERVICE PROVIDER WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN SECTION 7.2.5), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM OWNER'S TERMINATION FOR CONVENIENCE.

8.2.5 Payment upon Termination. Service Provider shall cease performing Services on the date (the "*Termination Date*") in its notice of termination to Owner subject to completion of outstanding projects in accordance with the notice of termination or of Service Provider's receipt of Owner's notice of termination, as applicable. As soon as practicable after the Termination Date, but in any event within 30 days thereafter, Service Provider shall deliver to Owner (a) all documents pertaining to a Project and/or the Services, and (b) its final invoice for Services through the Termination Date. In the event of termination, Owner

shall pay to Service Provider, as full payment for all Services satisfactorily performed prior to the Termination Date together with approved Reimbursable Expenses then due (the “*Termination Payment*”), provided Service Provider delivers to Owner invoices, accounts, reports and other materials as required for payment along with all reports, documents, and other materials prepared by Service Provider in connection with all Project Agreements prior to termination. Owner shall offset against the Termination any and all damages, foreseen or unforeseen, and losses that are sustained by Owner as a result of any default or consequence of termination including, by way of example and not of limitation, additional costs to Owner to complete any incomplete Projects or to correct non-conforming Services.

ARTICLE 9 – DOCUMENTS AND CONFIDENTIALITY

9.1 **Documents Provided by Owner.** Any and all documents provided by Owner to Service Provider for its use in connection with a Project, including (by way of example and not of limitation) drawings and specifications for construction projects, shall be and remain the sole property of Owner. Service Provider shall not use any documents provided by Owner except in connection with the Project for which they were provided.

9.1.1 Service Provider shall take [(USE FOR SERVICE PROVIDERS THAT ARE **NOT PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES**) all steps / [(USE FOR SERVICE PROVIDERS THAT **ARE PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES**) reasonable precautions] all steps to verify the accuracy and suitability of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to Service Provider (by Owner or any other party) that Services Provider uses for a Project. Service Provider shall identify to Owner in writing any such documents or data which, Service Provider’s professional opinion are unsuitable, improper, or inaccurate in connection with the purposes for which such document or data is furnished. Owner does not warrant for the accuracy or suitability of such documents or data as are furnished unless Service Provider advises Owner in writing that in Service Provider’s opinion such document or data and any requests made therein for action are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes Service Provider to proceed in accordance with the documents or data as originally given.

9.2 **Documents Prepared by Service Provider**

[(USE FOR SERVICE PROVIDERS THAT ARE **NOT PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES**)]

9.2.1 Service Provider conveys and assigns to Owner its entire interest and full ownership worldwide in and to any work, invention, and all documents, and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively “*Proprietary Rights*”) that Service Provider, its agents, employees, contractors, and subcontractors (collectively “*Authors*”) develop, write, or produce under this Agreement (collectively “*Works*”).

9.2.2 The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Service Provider shall place a conspicuous notation on any Works which indicates that Owner owns the Proprietary Rights.

- 9.2.3 Service Provider shall execute all documents required by Owner to further evidence this assignment and ownership. Service Provider shall cooperate with Owner in registering, creating, and enforcing Proprietary Rights arising under this Agreement. If Service Provider's assistance is requested and rendered under this Section, Owner shall reimburse Service Provider for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Agreement, or if requested by Owner, Service Provider shall deliver all Works to Owner. Service Provider shall obtain written agreements from the Authors which bind them to the terms in this Section.
- 9.2.4 All Works developed, written, or produced under this Agreement on or after the Effective Date for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire."
- 9.2.5 Service Provider may retain copies of the Works for its archives. Service Provider shall not otherwise use, sell, license, or market the Works.

[USE FOR SERVICE PROVIDERS THAT ARE PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES]

- 9.2.6 All documents prepared by Service Provider (including any Consultant of Service Provider) are instruments of service and shall remain the property of Service Provider. Owner shall be permitted to retain copies including CAD and reproducible copies, of all documents prepared by Service Provider (including any Consultant of Service Provider) for information and reference in connection with a Project. Owner's shall have an irrevocable, fully paid-up perpetual license to use the documents, including the originals thereof, and the ideas and designs contained therein, for any purpose, regardless of whether Service Provider remains as Service Provider, has resigned, this Agreement has been terminated, Service Provider's scope of services has been modified, or Service Provider services have been completed. Service Provider shall not use any design documents provided by Service Provider in connection with a Project for any other work, whether for Owner or for another client, without Owner's prior written consent.
- 9.2.7 Submission or distribution to meet official regulatory requirements or for other purposes in connection with a Project is not be construed as publication in derogation of Service Provider's rights.
- 9.3 **Confidentiality.** Except as provided in Section 9.2 and in accordance with Chapter 552 of the Texas Government Code, Service Provider shall keep confidential, and shall require its employees, agents, subordinates, and Consultants to keep confidential all information disclosed by Owner or its consultants to Service Provider or developed by Service Provider or Service Provider's employees, agents, subordinates, or Consultants in the performance of services hereunder.

ARTICLE 10 – RECORDS; AUDIT

- 10.1 **Audit Records.** Service Provider shall keep full and detailed records and accounts of all pertinent information related to this Agreement and any Project awarded under it in accordance with generally accepted accounting principles ("GAAP") and exercise such cost controls as may be necessary for proper financial management under this Agreement. The accounting and control systems must be satisfactory to Owner. Owner and its representatives (including but not limited to third-party auditing consultants, if any) will be afforded reasonable access, at reasonable times, to

all records establishing the actual cost of each Project awarded to Service Provider hereunder (collectively, “*Audit Records*”), including but not limited to: Service Provider’s accounting records, time sheets, payroll burden calculations, Insurance Documents, bond cost documentation and other bond information (if applicable), invoices, bills, Reimbursable Expenses and expense reports, additional services reports, records, books, foreman’s reports (for construction Projects), superintendent daily logs (for construction Projects), correspondence, instructions, Record Drawings (for construction Projects), receipts, subcontracts, purchase orders, vouchers, memoranda, written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc., if applicable), original estimates, estimating work sheets correspondence, change order files (including documentation), general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, any other supporting evidence necessary to substantiate charges related to this Agreement (including all Projects awarded to Service Provider hereunder) and other records, drawings or data relating to the services rendered in accordance with this Agreement. Service Provider shall preserve Audit Records for a Project for a period of four years after final payment or abandonment of the Project, or for such longer period as may be required by Applicable Law or directed in writing by Owner.

10.1.1 “*Insurance Documents*” means and includes insurance policies, insurance contracts and third party insurer or insurance agent invoices for the specific coverages and insurance amounts required of Service Provider in this Agreement. If this Agreement permits Service Provider to obtain and maintain certain coverages under blanket policies, “*Insurance Documents*” additionally includes the method of allocation and all figures used to calculate the portion allocated to a Project. For example, if Service Provider maintains a blanket commercial automobile policy and this Agreement permits Service Provider to use that blanket coverage to satisfy its insurance obligations a Project, then Service Provider must provide (a) third party invoices for the total cost of the blanket coverage, (b) the total number of rolling stock covered under the blanket coverage, and (c) the total number of rolling stock items serving the Project at any one time. Likewise, if Service Provider maintains a blanket general liability policy and this Agreement permits Service Provider to use that blanket coverage to satisfy its insurance obligations for a Project, then Provider must provide (a) third party invoices for the total cost of the blanket coverage, (b) third party insurer’s or insurance agent’s statement for the basis for calculating the annual premium (whether labor costs, gross receipts, or other amount), (c) the amount, for each coverage year, of the basis used to calculate the premium, and (d) the amount the Project contributes to the basis. Although these examples address two specific types of insurance coverage, they are meant to illustrate the requirement of comprehensive and meaningful record-keeping and disclosure, and not to limit the requirement to these two specific types of insurance coverage.

10.2 **Inspection; Audit.** The Audit Records (hard copy, as well as computer readable data if it can be made available) will be opened to inspection and subject to audit and/or reproduction by Owner’s agent or its authorized representative to the extent Owner deems necessary. Such audits may require inspection and copying from time to time and at reasonable times and places of any and all such information, materials and data as set forth above of every kind and character. Such records subject to audit will also include those records necessary to evaluate and verify direct costs (including overhead allocations) as they may apply to costs associated with this Agreement.

10.2.1 Owner’s agent or its authorized representative will have reasonable access at reasonable times to the Audit Records, Service Provider’s facilities, and will be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement, may contact subcontractors or other vendors related to the Project, will have

access to all necessary records and be provided adequate and appropriate work space in order to conduct audits in compliance with this Section 10.2, and will be provided support by Service Provider's staff as reasonably required.

ARTICLE 11 – INDEMNIFICATION

11.1 BODILY INJURY AND PROPERTY DAMAGE

[USE FOR SERVICE PROVIDERS THAT ARE NOT PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES]

11.1.1 SERVICE PROVIDER AGREES TO RELEASE, INDEMNIFY, PROTECT, AND HOLD HARMLESS OWNER AND ITS COMPONENT INSTITUTIONS, DIRECTORS, BOARD MEMBERS, REGENTS, TRUSTEES, OFFICERS, ADMINISTRATORS, AGENTS, EMPLOYEES, LICENSEES, SUCCESSORS AND ASSIGNS (“INDEMNITEES”) FROM ANY CLAIMS, DAMAGES, LOSSES, LIABILITIES, LIENS, COSTS AND/OR EXPENSES, CONTROVERSIES, CAUSES OF ACTION, LAWSUITS, PROCEEDINGS, INJURIES, JUDGMENTS AND EXPENSES (INCLUDING MEDIATION, SETTLEMENT, ATTORNEY FEES, AND OTHER COSTS OR EXPENSES) (EACH, A “CLAIM”) IF THE CLAIM: (A) IS RELATED TO BODILY INJURY, SICKNESS, DISEASE, DEATH OR LOSS OR DAMAGE TO REAL OR PERSONAL PROPERTY, INCLUDING ANY LOSS OF USE RESULTING THEREFROM (COLLECTIVELY, “DAMAGE”); AND (B) IS CAUSED IN WHOLE OR IN PART BY AN INDEMNIFYING PARTY’S: (I) NEGLIGENT ACT OR OMISSION; (II) REFUSAL OR FAILURE TO COMPLY WITH ANY OBLIGATION IN THIS AGREEMENT; OR (C) VIOLATION OF APPLICABLE LAW. “INDEMNIFYING PARTY” MEANS SERVICE PROVIDER AND/OR ITS CONSULTANT(S) OR ANY PARTY FOR WHOSE ACTS THEY MAY BE LIABLE.

[USE FOR SERVICE PROVIDERS THAT ARE PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES]

11.1.1 TO THE FULLEST EXTENT PERMITTED BY TEXAS GOVERNMENT CODE §2254.0031 AND TEXAS LOCAL GOVERNMENT CODE §271.904, SERVICE PROVIDER AGREES TO RELEASE, INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS INDEMNITEES FROM ANY CLAIMS, DAMAGES, LOSSES, LIABILITIES, LIENS, COSTS AND/OR EXPENSES, CONTROVERSIES, CAUSES OF ACTION, LAWSUITS, PROCEEDINGS, INJURIES, JUDGMENTS AND EXPENSES (INCLUDING MEDIATION, SETTLEMENT, ATTORNEY FEES, AND OTHER COSTS OR EXPENSES) (EACH, A “AE CLAIM”) IF THE AE CLAIM IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER (“AE DAMAGE”) COMMITTED BY SERVICE PROVIDER, IT’S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH SERVICE PROVIDER EXERCISES CONTROL.

11.1.2 NOTWITHSTANDING THE FOREGOING, SERVICE PROVIDER SHALL NOT BE OBLIGATED TO INDEMNIFY THE INDEMNIFIED PARTIES FROM OR

AGAINST AN AE CLAIM RESULTING FROM OWNER'S NEGLIGENCE WHEN SUCH NEGLIGENCE IS THE SOLE AND PROXIMATE CAUSE OF THE AE DAMAGE WHICH IS THE BASIS OF AE CLAIM. IN THE EVENT SERVICE PROVIDER AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY FOR THE AE CLAIM WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.2 INTELLECTUAL PROPERTY

11.2.2 SERVICE PROVIDER SHALL PROTECT AND INDEMNIFY OWNER FROM AND AGAINST ALL AE CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT EXISTING UNDER THE LAWS OF THE UNITED STATES OR THE STATE OF TEXAS, ARISING BY OR OUT OF ANY OF THE SERVICES OR THE USE BY SERVICE PROVIDER, OR BY OWNER AT THE DIRECTION OF SERVICE PROVIDER, OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY SERVICE PROVIDER AND SERVICE PROVIDER SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. SERVICE PROVIDER DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER'S OR ITS DESIGN CONSULTANTS' DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH SERVICE PROVIDER AND SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT OWNER EXPENSE.

11.3 Survival. The indemnities contained herein shall survive the expiration or earlier termination of this Agreement.

ARTICLE 12 – INSURANCE; RISK OF LOSS

12.1 Coverages. [REVIEW REQUIRED BY THE UNIVERSITY'S RISK MANAGEMENT DEPARTMENT AS COVERAGE REQUIREMENTS MAY VARY DEPENDING ON THE SCOPE OF SERVICES] Service Provider shall, at a minimum, maintain the following insurance coverage in the following amounts during the Term of this Agreement:

<u>TYPE OF COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Worker's Compensation	Statutory Limit – State of Texas
Employer's Liability	\$1,000,000 per accident \$1,000,000 per employee \$1,000,000 policy limit
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate

<p>Coverage shall not contain any endorsement(s) excluding or limiting Products / Completed Operations, Contractual Liability, Action Over claims, or Cross Liability and shall include the following:</p> <ul style="list-style-type: none"> • Comprehensive Form • Premises / Operations • Products / Completed Operations • Broad Form and Third Party Property Damage • Personal Injury 	
Commercial Auto Liability	\$1,000,000 combined single limit
<p>[USE FOR SERVICE PROVIDERS THAT ARE NOT PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES]</p> Professional Liability	\$1,000,000 per occurrence; aggregate
<p>[USE FOR SERVICE PROVIDERS THAT ARE PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES]</p> Professional Liability <p>Service Provider shall also require that the following Consultants maintain professional liability insurance:</p>	<u>Category 1:</u> \$1,000,000 per occurrence; aggregate
	<u>Category 2:</u> \$5,000,000 per occurrence; aggregate
	<i>Structural, Mechanical/Electrical/Plumbing (MEP), and Civil Engineering:</i>
	<u>Category 1:</u> \$1,000,00 per occurrence; aggregate
	<u>Category 2:</u> \$5,000,000 per occurrence; aggregate
	<i>Other Consultants:</i> an amount acceptable to Owner.
Umbrella/Excess Liability	\$1,000,000

12.2 Policy Requirements

12.2.1 Each policy required in accordance with Section 12.1:

- 12.2.1.1 must expressly be primary and non-contributory with respect to Owner’s insurance or self-insured retention;
- 12.2.1.2 must name Owner as an Additional Insured, excepting exception of Workers Compensation, Professional Liability and Employers Liability;
- 12.2.1.3 must contain a complete waiver of subrogation against Owner by both Service Provider and its carrier;
- 12.2.1.4 must be evidenced by a certificate of insurance be provided to Owner prior to the start of the Services and any change in, or replacement or termination of coverage must be reported 30 days prior to taking effect;
- 12.2.1.5 must be issued by an insurer authorized to do business in the state of Texas and rated “A -,” VII or better by AM Best Company; and
- 12.2.1.6 must be furnished to Owner upon Owner’s request.

- 12.2.2 The Commercial General Liability policy shall not, whether internally or by endorsement, exclude or limit Products/Completed Operations coverage, Contractual Liability, Action Over claims, or Cross Liability.
- 12.2.3 If the Professional Liability coverage is written on a “claims made” basis, Service Provider shall also provide proof of renewal each year for two years after substantial completion of each Project, or in the alternative: (a) evidence of extended reporting period coverage for a period of two years after substantial completion or (b) a project liability policy for each Project covered by this Agreement with a duration of two years after substantial completion.
- 12.2.4 Umbrella/Excess Liability Insurance will be excess over and applies in excess and follows form of the primary liability coverages required hereinabove at least as broad and applies in excess and follows form of the primary liability coverages required hereinabove. The policy shall have “drop down” coverage where underlying primary insurance coverage limits are insufficient or exhaustion of underlying aggregate limits.
- 12.3 **Deductibles and Retentions.** Service Provider shall bear the cost for all deductibles, retentions and actual losses not covered by insurance required under this Agreement.
- 12.4 **Apportionment of Risk.** Services shall be rendered at Service Provider’s exclusive risk until Owner’s Final Acceptance, and in case of any loss or damage thereto, in whole or in part, prior to such acceptance, however cause, such loss and/or damage shall be borne by Service Provider.

ARTICLE 13 – HISTORICALLY UNDERUTILIZED BUSINESSES

- 13.1 Service Provider, as a material provision of the Agreement, must comply with the requirements of Owner’s Historically Underutilized Businesses Policy and adhere to any HUB Subcontracting Plan (“HSP”) and/or Letter of Commitment submitted with Service Provider’s Qualifications. No changes to the HUB Subcontracting Plan can be made by Service Provider without Owner’s prior written approval accordance with Owner’s Historically Underutilized Businesses Policy.
- 13.2 Service Provider shall make good faith efforts to award subcontracts in at least % of the value of this Agreement to Historically Underutilized Businesses. Owner’s Historically Underutilized Businesses Policy does not require Service Provider to in fact meet or exceed this goal, but it does require Service Provider to objectively demonstrate that it has made good faith efforts to do so.
- 13.3 Service Provider shall maintain business records documenting compliance with the HSP and/or Letter of Commitment and shall submit a monthly Progress Assessment Report (“PAR”) through Owner’s contract compliance system. The PAR is required as a condition for payment.
- 13.4 Service Provider shall report to Owner the identity and amount paid to each HUB and non-HUB subcontractor to whom Service Provider has awarded a subcontract under this Agreement.

ARTICLE 14 – STATE CONTRACTING REQUIREMENTS

- 14.1 **Texas Public Information Act.** [\[REQUIRED IF ENTIRE VALUE OF CONTRACT IS UNDER \\$1,000,000\]](#) Owner strictly adheres to all statues, court decisions, and opinions of the Texas Attorney General with respect to the disclosure of public information under Chapter 552 of the Texas Government, also referred to as the Texas Public Information Act. In accordance with Section 552.002 of the Texas Public Information Act and Section 2252.907 of the Texas

Government Code, Service Provider make any information created or exchanged with Owner pursuant to this Agreement (and not otherwise exempt from disclosure from the Texas Public Information Act) available in a format reasonably requested by Owner that is accessible to the public.

14.1.1 [REQUIRED IF ENTIRE VALUE OF CONTRACT IS OVER \$1,000,000] Service Provider shall:

14.1.1.1 preserve all “contracting information” (as defined in Section 552.003 of the Texas Government Code) related to the Agreement as provided by the records retention requirements applicable to Owner for the duration of the Agreement;

14.1.1.2 provide to Owner any contracting information related to the Agreement that is in the custody or possession of Service Provider on request of Owner no later than 10 business days after receiving such request from Owner; and

14.1.1.3 on completion of the Agreement, either:

14.1.1.3.1 provide at no cost to Owner all contracting information related to the Agreement that is in the custody or possession of Service Provider; or

14.1.1.3.2 preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to Owner.

14.1.2 Furthermore, Service Provider agrees that the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Agreement and Service Provider agrees that the Agreement can be terminated if Service Provider knowingly or intentionally fails to comply with a requirement of that subchapter.

14.2 **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.093, *Texas Government Code*, Service Provider agrees that any payments owing to Service Provider under this Agreement may be applied directly toward any debt or delinquency that Service Provider 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.

14.3 **Ethics Matters.** Service Provider and its employees, agents, representatives and subcontractors have read and understand Owner’s Conflicts of Interest Policy available at <http://www.uhsystem.edu/compliance-ethics/docs/sam/02/2a9.pdf> State of Texas Standards of Conduct and Conflict of Interest Provisions available at <https://statutes.capitol.texas.gov/Docs/GV/pdf/GV.572.pdf>, and applicable state ethics laws and rules available Neither Service Provider nor its employees, agents, representatives or subcontractors will assist or cause Owner’s employees to violate Owner’s Conflicts of Interest Policy, provisions described by State of Texas Standards of Conduct and Conflict of Interest Provisions, or applicable state ethics laws or rules.

14.4 **Disclosure of Interested Parties.** If the value of this agreement exceeds \$1,000,000, Service Provider certifies that it has complied with Section 2252.908 of the Texas Government Code and Part 1 Texas Administrative Code Sections 46.1 through 46.3 as implemented by the Texas Ethics Commission (“TEC”), if applicable, and has provided Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by Service Provider.

14.5 **Registration of Sex Offenders.** Service Provider shall require any individual on Owner's property in satisfaction of Service Provider's obligations under this Agreement to register with the University of Houston's Department of Public Safety within seven days of beginning work on Owner's property in accordance with Section 62.153, *Texas Code of Criminal Procedure*, if such individual (a) is required to register as sex offenders with local law enforcement authorities in accordance with Chapter 62 of the *Texas Code of Criminal Procedure*, and (b) will be on Owner's property for 14 or more consecutive days or for more than 30 days in any calendar year.

14.6 **Certifications**

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

14.6.2 *Franchise Tax Certification.* If Service Provider is a corporate or limited liability company, Service Provider certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that it 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.

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

14.6.4 *Service Provider Certification regarding Business with Certain Countries and Organizations.* Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Service Provider certifies Service Provider is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

14.6.5 [\[THIS PROVISION DOES NOT APPLY TO CONTRACTS WITH A NON-PROFIT ENTITY OR NON-PROFIT BUSINESS ASSOCIATION.\]](#) *Service Provider Certification regarding Boycotting Israel.* Pursuant to Chapter 808, *Texas Government Code*, Service Provider certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the Term of this Agreement. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

14.6.6 [\[THIS PROVISION DOES NOT APPLY TO CONTRACTS WITH A NON-PROFIT ENTITY OR NON-PROFIT BUSINESS ASSOCIATION.\]](#) *Service Provider Certification regarding Boycotting Energy Companies.* Pursuant to Chapter 809, *Texas Government Code*, Service Provider certifies (a) it does not boycott energy companies and (b) it will not boycott energy during the Term of this Agreement. Service Provider acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

14.6.7 [\[THIS PROVISION DOES NOT APPLY TO: \(1\) CONTRACTS BELOW \\$100,000; \(2\) CONTRACTS WITH A SOLE-SOURCE PROVIDER; AND \(3\) CONTRACTS WITH A](#)

NON-PROFIT ENTITY OR NON-PROFIT BUSINESS ASSOCIATION OR A SOLE PROPRIETORSHIP, OR A FOR-PROFIT ENTITY THAT HAS LESS THAN 10 FULL TIME EMPLOYEES.] Service Provider Certification regarding Discrimination against Firearm Entities or Trade Associations. Pursuant to Chapter 2274, Texas Government Code, Service Provider verifies (a) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (b) it will not discriminate during the Term of this Agreement against a firearm entity or firearm trade association. Service Provider acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

- 14.6.8 *Service Provider Certification regarding Foreign Adversaries.* Pursuant to the Texas Governor’s Executive Order No. GA-48, Service Provider certifies that it and, if applicable, any of its holding companies or subsidiaries, is not (a) listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); (b) listed in Section 1260H of the 2021 NDAA; (c) owned by the government of a country on the U.S. Department of Commerce’s foreign adversaries list under 15 C.F.R. 791.4; or (d) controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce’s foreign adversaries list under 15 C.F.R. 791. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 14.6.9 *Financial Interest.* Service Provider certifies that no member of Owner’s 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 Agreement.

ARTICLE 15 – MISCELLANEOUS PROVISIONS

- 15.1 **Limitation of Liability.** Except for the obligation of Owner to pay Service Provider in accordance with Section 7 above, Owner shall have no liability to Service Provider or to anyone claiming through or under Service Provider by reason of the execution or performance of this Agreement. Interest on any award against Owner in an adjudication for breach of an express provision of this Agreement shall accrue at the Prime Rate not to exceed 10% per annum. “*Prime Rate*” means the per annum interest rate publicly announced by a federally insured bank in the state of Texas selected by Owner as such bank’s prime or base rate. Notwithstanding any obligation or liability of Owner to Service Provider, no present or future partner or affiliate of Owner or any agent, officer, director, employee, or regent of Owner or of the components comprising of the University of Houston System, or anyone claiming under Owner has or shall have any personal liability to Service Provider or to anyone claiming through or under Service Provider by reason of the execution or performance of this Agreement.
- 15.2 **Relationship of the Parties.** Service Provider is an independent contractor and not an agent or employee of Owner. Nothing in this Agreement shall be construed to create a joint venture, partnership, association, or like relationship between the parties.
- 15.3 **No Waiver**
- 15.3.1 No failure or delay of a party in the exercise of any right given to such party hereunder or by Applicable Law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof or of any breach of any other provision hereof.

- 15.3.2 No acceptance or approval of documents submitted or services rendered by Service Provider shall be deemed to release Service Provider from its obligations to Owner and responsibilities under Applicable Law, or to waive Owner's remedies for Service Provider's breach, failure or violation of such obligations and responsibilities.
- 15.4 **Governing Law; Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas, excluding its choice of law principles. Should litigation arise concerning all or any part of this Agreement, venue shall lie solely and exclusively in Harris County, Texas.
- 15.5 **Severability.** If any provision of this Agreement is for any reason held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision of this Agreement and this Agreement will be construed as if such invalid or unenforceable provision had not been included herein.
- 15.6 **Entire Agreement; No Third Party Beneficiaries.** This Agreement represents the entire and integrated Agreement between Owner and Service Provider with respect to the Project. This Agreement supersedes all prior negotiations, representations or Agreements, either written or oral with respect to the Project. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against Owner. It is agreed by Owner and Service Provider that this Agreement is intended for the benefit of Owner and Service Provider only and not for the benefit of consultants (including Consultants), engineers, contractors, subcontractors, including suppliers or any of their employees or agents, or any other person, whether retained by or claiming under Owner or Service Provider.
- 15.7 **Amendments.** This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.
- 15.8 **Breach of Contract Claims.** To the extent that it is applicable, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by Service Provider to resolve any claim for breach of contract made by Service Provider that is not resolved in the ordinary course of business between Service Provider and Owner and as set forth above.
- 15.9 **Captions.** The captions of paragraphs in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 15.10 **Notices.** Any notice required or permitted to be given under this Agreement must be in writing and may be served by depositing same with the United States Postal Service, addressed to the party to be notified, postage prepaid and in registered or certified form, with return receipt requested; by hand delivery by reputable courier for hand delivery; or by deposit with Federal Express or other reputable overnight courier for overnight delivery. Notice given as required herein will be effective on the date actually received at the address to which such notice was sent, or if delivery is refused or not accepted, such notice shall be effective on the date of such refusal or failure to accept delivery. For purposes of notice, the addresses of the parties are set forth in Section 1.1 or to such other address or facsimile number that the parties may designate in writing.
- 15.11 **Successors and Assigns.** Service Provider binds itself, its partners, successors, assigns and legal representatives to Owner and to the successors, assigns and legal representatives of Owner with respect to all provisions of this Agreement. Service Provider shall not assign, sublet or transfer its interests in this Agreement without the prior written consent of Owner.

- 15.12 **[REQUIRED IF SERVICE PROVIDER IS AN INDIVIDUAL] Death or Incapacity.** If Service Provider transacts business as an individual, his death or incapacity shall automatically terminate this 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 for any Services satisfactorily rendered prior to such termination not heretofore paid, reduced by the amount of additional cost which will be incurred by Owner by reason of such termination.
- 15.13 **Electronic Signatures.** Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. “*Electronic Signature*” means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the Texas Uniform Electronic Transactions Act (Tex. Bus. & Com. Code Ann. § 322.001 et seq.) as amended from time to time.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Owner and Service Provider have executed this Agreement on the dates set forth below.

SERVICE PROVIDER:

OWNER:

[LEGAL NAME OF SERVICE PROVIDER]

UNIVERSITY OF HOUSTON SYSTEM

By: _____
[Name]
[Title]

By: _____
[Name]
[Title]

Date: _____

Date: _____

Federal Tax ID No. _____

ATTEST:

APPROVED AS TO FORM:

By: _____
[Name]
[Title]

By: _____
[Name]
[Title]

Date: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES

[TO BE INSERTED]

EXHIBIT B
PROJECT REQUEST

Date: _____ Account # _____

Contract # _____

To: *[Service Provider Project Manager]*

In accordance with the terms and conditions of the Continuing Services Agreement dated **[insert date]** between the **UNIVERSITY OF HOUSTON SYSTEM** (“*Owner*”) and **[INSERT NAME OF SERVICE PROVIDER]** (“*Service Provider*”), *Owner* is contemplating **[insert project description]** (the “*Project*”) and hereby requests your proposal to render the following Services:

In your Project Proposal, please describe the services you would perform in detail and provide an estimated schedule of the services and proposed fee. Unless otherwise specifically provided above by *Owner*, your fee will be a fixed fee.

If I have not received your Project Proposal within five (5) days of the date of this Project Request, *Service Provider* will be deemed to have declined to submit a Project Proposal for this Project.

Sincerely,

[Name]
Project Manager
[Department]

EXHIBIT C

PROJECT AGREEMENT FORM

This **PROJECT AGREEMENT** (“*Project Agreement*”) is subject to all terms and conditions of the Continuing Services Agreement between the **UNIVERSITY OF HOUSTON SYSTEM** (“*Owner*”) and **[INSERT NAME OF SERVICE PROVIDER]** (“*Service Provider*”) dated effective as of **[insert date]** (the “*Continuing Services Agreement*”). This Project Agreement become a part of the Continuing Services Agreement upon execution by both parties.

Contractor #: _____

Account #: _____

Project Agreement # _____

Service Provider is authorized to perform the services as described below under the terms and conditions of the Continuing Services Agreement and at the sole satisfaction and approval of Owner. Service Provider may not begin performance until the date listed in the Owner’s written notice to proceed.

SCOPE OF SERVICES FOR PROJECT:

	Check here if an exhibit, offer, proposal or other similar document (an “Attachment”) is being added as part of this Agreement. Any such Attachment: (i) should be expressly described above (including the date and issuer of the Attachment) and attached to this Agreement; and (ii) is hereby incorporated by reference, but only for the purpose of describing the scope of services for the Project and for no other purpose. In the event of any inconsistency between the Attachment and this Agreement, this Agreement will prevail.
--	--

COSTS/CHARGES:

1. Cost of Services (check one box only):

This is a lump sum contract. Owner will pay Service Provider the amount of _____.

This is not to exceed contract. Owner will pay Service Provider an amount not to exceed _____ based on the *hourly rates* set forth on the Hourly Rates set forth in **Exhibit D** of the Continuing Services Agreement.

2. Reimbursable Expenses: \$_____ for reimbursement in strict compliance with the Continuing Services Agreement, upon receipt of approved original invoices or other acceptable verification.

SCHEDULE: The Services to be performed under this Project Agreement shall begin on or before _____ and be completed on or before _____ (the "**Project Completion Date**"). The Project Completion Date is a material inducement to Owner in the award of this Project Agreement, and in default of completion of such Services by the Project Completion Date shall be a default under the Continuing Services Agreement for all purposes.

PROJECT MANAGER: The Project Manager for this Project, and his/her contact information is:

[Name], [Position]
[E-mail]

OWNER CONTACT: The Owner Contact for this Project, and his/her contact information is:

[Name], [Position]
[E-mail]

ACCOUNT:

	Cost of Services	Reimbursable Expenses	Total
Aggregate amount of Project Agreements issued to date			
This Project Agreement			
Continuing Services Agreement Total			

SERVICE PROVIDER:

[INSERT SERVICE PROVIDER'S NAME]

By: _____
Name: _____
Title: _____

Date: _____

OWNER:

UNIVERSITY OF HOUSTON SYSTEM

By: _____
Name: _____
Title: _____

Date: _____

EXHIBIT E

FEE GUIDE

[USE FOR SERVICE PROVIDERS THAT ARE PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES ONLY]