

UNIVERSITY of HOUSTON



Furnishings and Equipment Agreement

This Agreement, entered into and effective as of _____ (“Effective Date”), is entered into by and between the University of Houston through the Department/College/Division of _____ (“University”), an agency of the State of Texas pursuant to Chapter 111, Texas Education Code, and _____, a partnership or corporation of the County of _____ and State of _____ (“Contractor”).

Whereas, University and Contractor, in consideration of the covenants and agreements herein contained upon the part of each of them, do hereby contract, covenant, and agree each with the other as follows:

1. **SCOPE OF WORK:** Contractor will and efficiently, perform and furnish under the direction and to the satisfaction of _____, or the Associate Vice President, Plant Operations or his designee if requested or required by University policies and procedures, all of the work and materials (“Work”) necessary for supplying and setting in place of furnishings and equipment for the located on the University of Houston Campus in Houston, Texas, in accordance with the detailed specifications listed as follows:

all of which are attached hereto, designated pages ____ through ____ and made a part hereof.

2. **COMPENSATION:** It is hereby mutually agreed between the parties hereto that the not to exceed sum to be paid by University to Contractor for said Work shall be \$ _____. Payment shall be made for all items actually supplied and for labor extended under this Agreement within thirty (30) days following acceptance by University and completion of the work by the Contractor in accordance with Texas Government Code Chapter 2251.

3. **SCHEDULE:** The Work to be performed under this contract shall be commenced on _____ and shall be completed within _____ calendar days. Contractor agrees that the aforesaid completion date is a material consideration in the award of this Agreement, and in default of completion by the aforesaid date, Contractor shall pay to University liquidated damages in the amount of \$ _____ for each day completion is not reached.

4. **DELAY:** Should Contractor be delayed in the prosecution or completion of the Work by other contractors employed by University, or by any damage caused by fire, weather conditions or casualty for which Contractor is not responsible, or by general strikes or lockouts caused by reason of any or all of the causes aforesaid, an extended period shall be determined and fixed at the sole discretion of University; but no such allowance shall be made unless a claim therefore is presented in writing to University within ten (10) days of the occurrence of such delay. Contract time may be extended only through a written change order.

5. **OWNERSHIP OF DOCUMENTS:** All documents, including original drawings, estimates, specifications, field notes and data are and shall remain property of University. Contractor will be furnished reproducible copies of such drawings and other documents needed for implementation of the required work. University and Contractor agree that these drawings and

documents will be used solely in connection with the assignment covered by this Agreement and for no other purpose without prior negotiation.

- 6. **INDEMNITY:** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the University of Houston System, the University of Houston, their officers, agents, employees, officers, administrators, successors and assigns from and against all claims, injuries, damages, losses, costs, expenses and liability, including but not limited to reasonable attorneys’ fees, whether arising before, during or after completion of Contractor’s work, caused by or arising out of or resulting from performance of work, of whatever nature, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from, and (2) is caused in whole or in part by any act or omission by Contractor, and subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, but only to that extent, proportion or degree that the claims, damages, losses and expenses are attributable to the act or omission of Contractor or its subcontractors. Contractor will promptly repair, at his own expense and to the satisfaction of the University, any damage done by him or his employees or agents to the University buildings or property while delivering and setting in place any items of equipment.
- 7. **INSURANCE:** Prior to commencing performance, Contractor shall secure, and maintain in force until final acceptance of the project, the following kinds of insurance in the following amounts:

<u>TYPE OF COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Worker’s Compensation	Statutory Limit – State of Texas
Employer’s Liability	
Bodily Injury By Accident	\$1,000,000 Ea. Accident
Bodily Injury By Disease	\$1,000,000 Ea. Employee
Bodily Injury By Disease	\$1,000,000 Policy Limit
Commercial General Liability	\$1,000,000 Ea. Occurrence/\$2,000,000 Aggregate
(Includes the following:)	
Comprehensive Form	
Premises/Operations	
Underground Explosion & Collapse Hazard	
Products/Completed Operations	
Contractual Independent Contractors	
Broad Form Property Damage	
Personal Injury	
Fire Damage	Any One Fire \$500,000
Medical Expense	Any One Person \$20,000
Commercial Auto Liability	\$1,000,000 Combined Single Limit
Professional Liability	\$1,000,000 (if applicable)

University and the University of Houston System shall, with the exception of Workers Compensation and Employers Liability be named as an Additional Insured under each of the above policies, and Contractor and its insurer agree to provide a complete waiver of subrogation against University. The additional insured status will primary and non-contributory. Certificates of Insurance evidencing the proper coverage must be provided and accepted by University prior to the start of work and any change in coverage must be reported 30 days prior to taking effect. The insurance carrier must be an “A -” rated carrier. Contractor’s policy must also state that it is primary over any other available insurance that it may carry.

If any of the policies contain deductibles or retentions, the deductibles or retentions will be the sole responsibility of the Contractor. When a retention or deductible exceeds \$25,000, the University, reserves the right, but not the obligation, to review and request a copy of the Contractor's most recent annual report or audited financial statement.

Contractor agrees that all work on the project pursuant to this contract shall be at the Contractor's exclusive risk until final and complete acceptance thereof by University, 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 Contractor.

8. **BONDS:** Contractor shall furnish the following bonds:
- a. Performance Bond, if applicable and required by Texas Government Code Chapter 2253, in the amount of the total Contract Price (conditioned upon the faithful performance of the Contract). Said Bond shall be solely for the protection of the University and the State of Texas.
 - b. Payment Bond, if applicable and required by Texas Government Code Chapter 2253, in the amount of the total Contract Price, solely for the protection of those supplying labor and materials in the prosecution of the Contract.

Each bond shall be executed by a corporate surety or corporate sureties duly authorized to do business in the State of Texas, acceptable to University, and on forms approved by the Attorney General of Texas. If any surety upon any bond furnished in connection with this Contract becomes insolvent, or otherwise not authorized to do business in this State, Contractor shall promptly furnish equivalent security to protect the interests of the State of Texas and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

9. **RELATIONSHIP OF THE PARTIES:** It is agreed and understood that Contractor is an independent contractor and not an agent or employee of University. Nothing in this Contract shall be construed to create a joint venture, partnership, association, or like relationship between the parties.
10. **TERMINATION:** University reserves and has the right and privilege of canceling, suspending, or abandoning the execution of all or any service in connection with this Agreement at any time upon seven days (7) written notice to Contractor. Contractor may terminate this Agreement upon seven days (7) written notice to University should University substantially fail to perform their obligations under the terms of this Agreement. University's liability in case of early termination will be limited to paying for the work already performed and the expenses already incurred as of the date of the termination, less any and all foreseen or unforeseen damages sustained by University as a result of any default or consequence of termination.
11. **SUCCESSORS AND ASSIGNS:** University and Contractor each binds himself, and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement Contractor shall not assign, sublet or transfer his interest in this Agreement without written consent of University. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than University and Contractor.
12. **ALTERNATIVE DISPUTE RESOLUTION:**
- a. The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor:
 - (1) A Contractor's claims for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, the Contractor shall submit written notice, as required by subchapter B, to

[for the System, the Chancellor; for component institutions, the President] or his/her designee. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of University and Contractor other wise entitled to notice under the parties' contract. Compliance by the Contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

- (2) The contested case process provided in Chapter 2260, subchapter C, of the Government Code is the Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by University if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.
- (3) Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by University nor any other conduct of any representative of University relating to the contract shall be considered a waiver of sovereign immunity to suit.

- b. The submission, processing and resolution of the contractor's claim is governed by the published rules adopted by the Attorney General of the State of Texas pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. These rules are found at 1 T.A.C. Part 3 Chapter 68.
- c. Neither the occurrence of an event nor the pendency of a claim constitute grounds for the suspension of performance by the contractor, in whole or in part.

13. **CORPORATE FRANCHISE TAX:** Contractor (or "Seller" or other designation of contracting party) certifies that, upon the effective date of this agreement, either (1) it is not delinquent in payment of State of Texas corporate franchise taxes, or (2) it is not subject to the payment of such taxes. Contractor (or other designation of contracting party) agrees that any false statement with respect to franchise tax status shall be a material breach hereof, and University shall be entitled to terminate this Agreement upon written notice thereof to Contractor (or other designation).

14. **CHILD SUPPORT:** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. By executing this Agreement, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive payment from the state and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate. (Family Code, Section 231.006).

15. **PROPRIETARY INFORMATION:**

- a. Contractor shall maintain the confidentiality of all proprietary information provided to it by the University. Information in the public domain or otherwise obtained independently by Contractor shall not be considered as confidential.
- b. Any programs, data or other materials furnished by University for use by Contractor in connection with the services performed under this Agreement shall remain the sole property of the University.

16. **NOTICE:** All notices and communications regarding this agreement must be in writing and directed to the following representatives:

For University

For Contractor

with a copy to:

with a copy to:

Office of the General Counsel
311 Ezekiel Cullen Building
Houston, TX 77204-5010
Attn: Executive Director

- 17. **COMPLIANCE:** Contractor agrees to abide by and perform the work under this Contract in compliance with all applicable City, State of Texas and Federal laws, rules, regulations and policies. While on the premises of University or its components, Contractor agrees to abide by the policies and procedures of University and its components relative to conduct on its premises.
- 18. **VENUE:** It is mutually agreed by the parties that if litigation should arise concerning all or any part of this contract, venue shall lie in Harris County, Texas.
- 19. **MISCELLANEOUS:**
 - a. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against University. It is agreed by University and Contractor that this Agreement is intended for the benefit of University and Contractor only and not for the benefit of architects, engineers, contractors, subcontractors, including suppliers or any of their employees or agents, or any other person.
 - b. This Agreement shall be governed by the laws of the State of Texas
 - c. This instrument contains the entire Agreement between University and Contractor and can be modified only by written instrument signed by authorized representatives of University and Contractor.
 - d. This agreement is not assignable without the express written agreement of both parties.

Executed in the year and day first above mentioned.

UNIVERSITY OF HOUSTON

CONTRACTOR

Signature _____ Date _____
Name: _____
Title: _____

Signature _____ Date _____
Name: _____
Title: _____

Signature _____ Date _____
Name: _____
Title: _____

Business: _____

Address: _____

Dept. Address: _____

Attn: _____

Note: Modification of this Form requires approval of OGC