

UNIVERSITY OF HOUSTON SYSTEM

CONTRACT FOR PROFESSIONAL SERVICES

Contract No. _____

Account No. _____

Project Name:

Project Address:

THIS CONTRACT FOR PROFESSIONAL SERVICES (this “*Agreement*”), made this _____ day of _____, by and between the UNIVERSITY OF HOUSTON SYSTEM (“*UNIVERSITY*”), an agency of the State of Texas pursuant to Chapter 111, Texas Education Code, and,

Name:

Address:

(“*CONTRACTOR*”), to perform the following services:

1.SCOPE OF WORK:

2. COMPENSATION: CONTRACTOR's compensation will be a charge for services as defined below, plus Reimbursable Expenses, as defined below:

a. Check one box only:

- This is a fixed price contract. UNIVERSITY will pay CONTRACTOR the amount of \$ _____ .
- This is not a fixed price contract. UNIVERSITY will pay CONTRACTOR an amount not to exceed \$ _____ based on the hourly rate(s) set forth in CONTRACTOR's proposal dated _____, a copy of which is attached for the limited purpose of establishing the hourly rates of the various persons that will or may be involved in the Scope of Work.

b. Reimbursable Expenses: Not to exceed \$ _____, which will include but not be limited to the following:

- (i) Expense of transportation and living when traveling in connection with the project, at UNIVERSITY's prior request, for other than regular trips within the Houston Metropolitan area.
- (i) Actual cost for long distance calls and/or Telex charges in connection with the project.
- (ii) Actual cost of printing and copying in connection with the project.

The above costs will be processed for reimbursement upon receipt of original invoice or other acceptable verification.

c. CONTRACTOR will invoice UNIVERSITY monthly for unpaid compensation earned under this Agreement. Invoices shall reference Contract No. _____ and Account No. _____. UNIVERSITY will promptly process for payment to CONTRACTOR each invoice, as approved by UNIVERSITY, upon receipt. Payment terms for amounts due from UNIVERSITY to CONTRACTOR under this Agreement (including due dates and late fees) are governed by Chapter 2251 of the Texas Government Code.

3. SCHEDULE: The work to be performed under this Agreement 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.

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 but good faith 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, hold harmless, and defend with counsel approved by UNIVERSITY, the UNIVERSITY OF HOUSTON SYSTEM BOARD OF REGENTS, the UNIVERSITY OF HOUSTON, the UNIVERSITY OF HOUSTON SYSTEM, the UNIVERSITY OF HOUSTON-CLEAR LAKE, the UNIVERSITY OF HOUSTON-DOWNTOWN, and the UNIVERSITY OF HOUSTON-VICTORIA, their agents, employees, officers, administrators, component institutions, 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 (“*Claim*”) is caused by or results from an act of negligence intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by CONTRACTOR, it’s agent, consultant under contract, or another entity over which the CONTRACTOR exercises control (“*Damage*”).

Notwithstanding anything to the contrary herein, neither party shall be liable to the other for consequential damages incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them; provided, however, loss of use and loss of profits are acknowledged and agreed for all purposes hereunder to constitute direct and not consequential damages.

Notwithstanding the foregoing, CONTRACTOR shall not be obligated to indemnify the Indemnified Parties from or against a Claim resulting from UNIVERSITY’s negligence when such negligence is the sole and proximate cause of the Damage which is the basis of the Claim. In the event CONTRACTOR and UNIVERSITY are found jointly liable by a court of competent jurisdiction, liability for the Claim will be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to UNIVERSITY under Texas law and without waiving any defenses of the Parties under Texas law.

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	\$1,000,000Ea. Accident
Bodily Injury By Disease	\$1,000,000Ea. Employee
Bodily Injury By Disease	\$1,000,000Policy Limit
Commercial General Liability	\$1,000,000 Ea. Occurrence/ \$2,000,000 Aggregate
Includes: Comprehensive Form	
Premises/Operations Products/Completed Operations	
Coverage shall not contain any endorsement(s) excluding nor limiting Products/Completed Operations, Contractual Liability or Cross Liability.	

Broad Form and Third Party 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	\$5,000,000 (if applicable)	

UNIVERSITY 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 CONTRACTOR. When a retention or deductible exceeds \$25,000, the Owner, reserves the right, but not the obligation, to review and request a copy of 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 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. **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 Agreement shall be construed to create a joint venture, partnership, association, or like relationship between the parties. CONTRACTOR accepts the relationship of trust and confidence established between it and UNIVERSITY by this Agreement and covenants to use CONTRACTOR's best professional efforts, skill, judgment, and abilities in performing the Services and to further the interests of UNIVERSITY in accordance with the usual and customary standards of CONTRACTOR'S profession and in compliance with all applicable laws.
9. **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 (7) days' written notice to CONTRACTOR; provided, however, if the termination is for cause, CONTRACTOR may vitiate UNIVERSITY's notice of termination by curing such cause within such seven (7) day period. CONTRACTOR may terminate this Agreement upon seven (7) days' 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.
10. **LIMITATION OF LIABILITY.** Except for the obligation of UNIVERSITY to pay CONTRACTOR in accordance with Paragraph 2 above, UNIVERSITY shall have no liability to CONTRACTOR or to anyone claiming through or under CONTRACTOR by reason of the

execution or performance of this Agreement. Interest on any award against UNIVERSITY in an adjudication for breach of an express provision of this Agreement shall accrue at the Prime Rate not to exceed ten percent (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 UNIVERSITY as such bank's prime or base rate. Notwithstanding any obligation or liability of UNIVERSITY to CONTRACTOR, no present or future partner or affiliate of UNIVERSITY or any agent, officer, director, employee, or regent of UNIVERSITY or of the components comprising The University of Houston System, or anyone claiming under UNIVERSITY has or shall have any personal liability to CONTRACTOR or to anyone claiming through or under CONTRACTOR by reason of the execution or performance of this Agreement.

- 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. INVALIDATION:** If this Agreement is not executed by CONTRACTOR within 10 days, it shall become invalid unless UNIVERSITY extends the time in writing.
- 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. COMPLIANCE:** CONTRACTOR agrees to abide by and perform the work under this Agreement 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.
- 15. VENUE:** It is mutually agreed by the parties that if litigation should arise concerning all or any part of this Agreement, venue shall lie in Harris County, Texas.
- 16. MISCELLANIOUS:**
 - a.** By signing this Agreement, CONTRACTOR certifies as follows:
 - (i)** "Under Section 231.006, Texas Family Code, CONTRACTOR certifies that the individual or business entity named in this Agreement, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate."

- (ii) “Under Section 2155.004, Texas Government Code, CONTRACTOR certifies that the individual or business entity named in this Agreement is not ineligible to receive this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.”
- b. CONTRACTOR shall require any individual on UNIVERSITY’s property in satisfaction of CONTRACTOR’S obligations under this Agreement to register with University of Houston Department of Public Safety within seven (7) days of beginning work on Owner’s property in accordance with Texas Code of Criminal Procedure Article 62.153 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 UNIVERSITY’s property for fourteen (14) or more consecutive days or for more than thirty (30) days in any calendar year.
- c. 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.
- d. This Agreement shall be governed by the laws of the State of Texas.
- e. 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.

EXECUTED in the year and day referenced first above mentioned.

CONTRACTOR

By: _____
 Name: _____
 Title: _____
 Date: _____

Tax Identification No.: _____

**AUTHORIZED AND ACCEPTED:
University of Houston System**

By: _____
Name:
Title:

Date: _____

By: _____
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Note: Modification of this Form requires approval of OGC.