UNIVERSITY OF HOUSTON SYSTEM

Continuing Services Agreement

Contract No.: _____

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This Continuing Services Agreement ("***Agreement***") is entered into as of _____ (the "***Effective Date***") by and between the **UNIVERSITY OF HOUSTON SYSTEM** ("***Owner***"), and _____ ("***Service Provider***"). In this Agreement, University and Service Provider may be referred to singularly as a "***Party***" and collectively as the "***Parties***."

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SECTION 1 - **SERVICES**

1.1 **In General**. This Agreement governs the provision of various professional services ("***Services***") which, upon the Parties' mutual consent, will be performed by Service Provider for projects of limited scope (each, a "***Project***"). As requested by Owner, Service Provider will provide Services on a per-Project basis in accordance with the terms of this Agreement and the applicable Project Agreement (as defined below). The list of Services that may be performed pursuant to this Agreement is set forth in **Exhibit A** attached hereto and incorporated by reference.

1.2 **Non-Exclusive Engagement**. Nothing in this Agreement precludes Owner from entering into similar agreements with other parties.

1.3 **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.

1.4 **Project Requests**. If and when Owner requires Services, Owner will prepare and email to 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 form of Project Request is attached hereto as **Exhibit B**.

1.5 **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 include the following:

1.5.1 A narrative description of Service Provider's understanding of the Services;

1.5.2 A detailed statement of the basic 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***");

1.5.3 A description of particular phases of the Services, if applicable;

1.5.4 The total fee for providing the Services expressed as a "Not to Exceed" amount (the "***Maximum Contract Sum***");

1.5.5 The total fee for providing any Additional Services (as defined below) expressed as a "Not to Exceed" amount;

1.5.6 The total anticipated dollar amount of Reimbursable Expenses (as defined below);

1.5.7 A proposed commencement date and the number of calendar days Service Provider will require to complete the Project;

1.5.8 If Service Provider intends to employ consultants:

1.5.8.1 a list of all consultants that Service Provider proposes to use in the performance of the Services;

1.5.8.2 a schedule of the hourly billing rates for any consultants that Service Provider proposes to use in the performance of the Services;

1.5.8.3 any qualifications or conditions applicable to the Project Proposal; and

1.5.8.4 a summary statement of the Not-to-Exceed dollar amount of all previous Project Agreements under this Agreement to date.

1.6 **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 form of Project Agreement is attached hereto as **Exhibit C**. Once the draft 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. The draft 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 1.7.

1.7 **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 (1) Service Provider has received the Project Agreement, and (2) Service Provider has received Owner's Notice to Proceed which notice shall refer to the Project Agreement number of the Project; **and** (3) the date contained in the Notice to Proceed for Service Provider to begin work on the Project.

1.8 **Changes**. The Parties may, without invalidating this Agreement, agree to change the Services, as defined in this Agreement, or the Services identified in any Project Agreement prior to completion of the Services, by executing a Design Change Authorization in Owner's then-current form.

SECTION 2 - **SERVICE PROVIDER RESPONSIBILITIES**

2.1 **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 Subsections 4.3.3 through 4.3.5, 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.

2.2 **Project Manager**. For each Project (if any), 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.

2.3 **Phasing**. Service Provider shall not proceed beyond any previously authorized phase of the work for a Project (each, a "***Phase***") unless authorized by Owner in writing. Any work or 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 Scope of Services of the Project Agreement.

2.4 **Consultants.** For each Project, Service Provider shall bind each and every consultant retained by Service Provider for completion of the Project (each, a "***Consultant***") to the terms of the Project Agreement (which shall incorporate the terms, conditions and provisions of this Agreement), and shall ensure that all persons rendering Services under the Project Agreement are properly licensed and/or registered as required to provide such Services under Applicable Law (as defined in Section 3.1). 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 Consultant's consent in each contract with Consultants for Services. Service Provider shall require all Consultants to include a similar assignment provision in each and every subcontract Consultants issue for Services. Conformed copies of executed Consultant subcontracts shall be provided to Owner. Nothing in the foregoing shall create a contractual relation between Owner and any Consultants.

2.4.1 Architect and engineer Consultants must be licensed and registered in the State of Texas to practice in the field for which they are retained by Service Provider, and must sign and stamp their reports regarding the Project.

2.5 **Documentation and Schedule**. Service Provider shall fully document its Project activities by way of drawings, reports or other methods appropriate to the Services and the Services (the "***Project Documents***") and in accordance with the requirements of the Project Agreement. Service Provider shall provide digital and hard copy of one (1) review set and one (1) final set of all Project Documents to Owner Contact at Service Provider's cost. Service Provider shall deliver review sets of Project Documents to 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 shall be part of Service Provider's compensation as set forth in the Project Agreement and shall not be billed to or paid by Owner. Any delay in the completion of a Project resulting from Service Provider's failure to comply with the provisions of this Section 2.5 shall be the sole fault and responsibility of Service Provider.

2.6 **Additional Services**. "***Additional Services***" are Services that are not part of the Services for a Project but that are rendered by Service Provider after receipt of Owner's written authorization in the manner described below. Prior to commencing any Additional Service, Service Provider shall submit to Owner's designated representative for the Project an "***Additional Services Proposal***," in such form as directed by Owner, describing in detail the nature or scope of the Additional Services, who proposed the Additional Services and why, the total, not-to-exceed amount of fees and reimbursable expenses Service Provider will bill for the Additional Services, the proposed schedule for the performance of the Additional Services, and a total of the amount(s) billed to date for Additional Services in connection with the Project. Owner shall not be obligated to make any payment for Additional Services unless and until Owner has authorized the Additional Services by issuing a Design Change Authorization in Owner's then-current form. (The current form of Design Change Authorization is attached as **Exhibit E** for information only.)

2.7 **Correction of Services and Work**. Upon notice, Service Provider shall, without any additional cost or expense to Owner, 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.

SECTION 3 - **SERVICE PROVIDER REPRESENTATIONS**

3.1 **Applicable Laws**. 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.

3.1.1 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 the 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.

3.2 **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.

3.3 **Standard of Care; Conformity**. Service Provider shall use its best professional efforts, skill, judgment, and abilities to perform Service Provider's services in an expeditious and timely manner as is consistent with professional standards of care and the orderly progress of any Project authorized pursuant to

this Agreement. Service Provider shall complete the Project in accordance with the Project Agreement and this Agreement (the "***Contract Documents***"). As a material inducement to Owner to enter into this Agreement and any Project Agreement with Service Provider, Service Provider represents, warrants and covenants that (a) the Contract Documents will be sufficient in all regards for the completion of the Project, and (b) the Project, when completed in compliance with the Contract Documents, will be suitable for its intended purpose.

3.4 **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.

3.5 **Eligibility to Receive Payment**. In accordance with Section 231.006 of the Texas Family Code and Sections 2155.004 and 2155.006 of the Texas Government Code, Service Provider certifies that it is not ineligible to receive this Agreement and payments under this Agreement and acknowledges that Owner may terminate this Agreement and/or withhold payment if this certification is inaccurate.

3.6 **Payment of Debts/Delinquency to the State**. Service Provider is, and at the time it submits a Project Proposal shall be, capable of paying its obligations as they come due. Service Provider certifies that it is not indebted to the State of Texas and is current on all taxes owed to the State of Texas. Any payments owed to Service Provider under this Agreement (including any Project 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.

SECTION 4 - **OWNER RESPONSIBILITIES**

4.1 **Appointment of Owner Contact**. Owner will appoint an individual from Owner's Plant Operations Department (the "***Owner Contact***") for each Project authorized under this Agreement for administration of this Agreement, the Project, and the Project Agreement. Owner may replace the Owner Contact on written notice to Service Provider. Notwithstanding the presence of the Owner Contact at the Premises, however, 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:

4.1.1 Provide an initial budget for the Project, including information as to the space and facility requirements, budget limitations and scheduling.

4.1.2 Provide notice to Service Provider if Owner observes or otherwise becomes aware of any fault or defect in the Project or non-conformance of Service Provider's Services with the requirements of the Contract Documents.

4.1.3 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.

4.1.4 Assist Service Provider in gaining entry to such property as reasonably necessary for Service Provider to perform the Services.

4.2 **Additional Owner Responsibilities**.

4.2.1 Owner shall furnish its legal, accounting, auditing and insurance counseling services for any Project at no cost to Service Provider, except to the extent otherwise expressly set forth in this Agreement.

4.2.2 Furnish an existing land survey of the Premises, if any exists and if required by Applicable Law or the Project Agreement.

4.2.3 Furnish all necessary structural, mechanical, chemical and other laboratory tests, inspections and reports as required by Applicable Law or the Project Agreement.

4.2.4 Pay the cost of reproduction of any Contract Documents in excess of those required by this Agreement and/or the Project Agreement.

SECTION 5 - **COMPENSATION**

5.1 **Maximum Contract Sum**. Each Project Agreement will identify the agreed fee for the Project, whether expressed as a lump sum or a not-to-exceed amount; provided, however, Service Provider's fee will be calculated and billed based on the actual Services rendered by Service Provider for the Project at the DSE. Under no circumstances will Service Provider bill or invoice Owner for any costs incurred in submitting or negotiating this Agreement or a Project Proposal. The Direct Salary Expense, or "***DSE***" means the actual salaries, 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). 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 _____ shall be applied to the DSE for the purpose of covering such fringe benefits, expense, and profit. All personnel shall mean anyone employed by Service Provider and its consultants. The DSE for the personnel directly engaged on the Project is set forth in **Exhibit D**.

5.1.1 Any change in or alteration to the Maximum Contract Sum shall be documented by way of a Design Change Authorization on Owner's then-current form. Owner's current form of Design Change Authorization is attached, for information purposes only, as **Exhibit E**.

5.2 **Reimbursable Expenses**. "***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:

5.2.1 Commercially reasonable out-of-pocket expense of reproductions (other than those required as part of the Services, billed as Additional Services, provided by Owner, or for the use of Service Provider and its Consultants); provided, however, all invoices for reproductions the obligation of Owner under this section, must be billed directly to Owner, free of state sales taxes, and identified by Service Provider as to the Project name, number and institution.

5.2.2 If authorized in writing in advance by Owner through a Design Change Authorization, the expense of renderings, mock-ups or models for Owner's use.

5.2.3 Fees paid for securing approval of Appropriate Authorities. "***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 the 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.

5.2.4 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.

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

5.2.6 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. 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.

5.3 **Not Reimbursable Expenses**. 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.

5.4 **Service Provider's Obligation to Invoice**. 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 identifying all fees earned and reimbursable expenses incurred in the previous month. Invoices shall be submitted in a format approved by Owner and must contain at least the following information:

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

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

5.4.3 Name of Project Manager;

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

5.4.5 Itemized description of Services provided including the names, billing rates and amount of time per task expended by all persons who performed Services for the Project during the billing period.

5.4.6 Completion status of Project by percentage;

5.4.7 Total amount invoiced for the calendar month;

5.4.8 Total amount of prior invoices and Maximum Contract Sum;

5.4.9 Copy of all receipts in support of any reimbursable expenses invoiced;

5.5 **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 5.5.7) of the 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.

5.6 **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:

5.6.1 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;

5.6.2 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;

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

5.6.4 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;

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

5.6.6 Service Provider is otherwise in breach or default under any Contract Document.

5.7 **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 Contract Documents except those claims specifically identified in writing by Service Provider as unsettled at the time of the final request for payment.

SECTION 6 - **TERM; RENEWALS; TERMINATION**

6.1 **Term**. The term of this Agreement ("***Initial Term***") will begin on the Effective Date and remain in effect for a period of two (2) years. The Initial Term together with any Renewal Term(s) shall be the "***Term***."

6.2 **Renewal**.

6.2.1 Owner's Renewal Option. Provided Owner is not in default of this Agreement, Owner will have the right to extend the Term for up to two (2) additional one (1) year renewal terms (each a "***Renewal Term***") on written notice to Service Provider not less than thirty (30) days prior to the then-current expiration date of the Term.

6.2.2 Completion of Work in Progress: Owner has the option to extend the Term as necessary for Service Provider to complete any Project approved by Owner prior to the expiration of this Agreement.

6.3 **Termination**.

6.3.1 Termination for Cause. Either Party may terminate this Agreement if the other Party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days following receipt of written notice from the non-breaching Party.

6.3.2 Termination for Convenience. Either Party may terminate this Agreement without cause by providing the other Party with at least thirty (30) days' prior written notice; provided, however, Service Provider may not terminate this Agreement for Service Provider's convenience unless and until it has finally completed all then-outstanding Projects in accordance with Project Agreements.

6.3.3 Payment Upon Termination. In the event of termination, Owner shall pay to Service Provider, as full payment for all Services satisfactorily performed prior to such termination 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, the cost to Owner to complete any incomplete Projects or to correct non-conforming Services.

6.3.4 Documents. Owner shall have the right to use copies of any original drawings, calculations, specifications, estimates, and other documents prepared under this Agreement by Service Provider to complete a Project interrupted by termination under this **SECTION 6**. Service Provider shall make such documents available to Owner upon request at no additional cost or expense. Owner will credit Service Provider with such authorship as may be due it and releases Service Provider from liability due to incompleteness of design, but Owner is not required to renew this Agreement for such purposes. Submission or distribution of such documents by Owner to meet official regulatory requirements or for other purposes in connection with the Project for which they were prepared is not, and will not be treated as, publication in derogation of Service Provider's rights.

SECTION 7 - **DOCUMENTS**

7.1 **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.

7.1.1 Service Provider warrants, represents, covenants, and agrees to call to Owner's attention anything 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) which it regards in its opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such document or data is furnished. Nothing shall excuse or detract from Service Provider's responsibilities or obligations hereunder in a case where such document or data is furnished unless Service Provider advises Owner in writing that in its 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 data as originally given.

7.2 **Documents Provided by Service Provider**. 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 reproducible copies, of all documents prepared by Service Provider for information and reference in connection with the Project. Owner's rights in this regard are in the nature of 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, and shall survive the expiration or earlier termination of this Agreement. 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.

SECTION 8 - **RECORDS; AUDIT**

8.1 **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 rates and the support therefor, insurance contracts, insurance policies, 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 (4) 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.

8.2 **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.

8.2.1 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 Article, and will be provided support by Service Provider's staff as reasonably required.

8.2.2 In the event Service Provider does not fully comply with the requirements of this ARTICLE 8, Service Provider will be responsible for the reasonable actual costs and fees (including attorneys' fees) incurred by Owner in attempting to conduct its audit(s) and otherwise enforcing its rights under this SECTION 9.

8.2.3 If any audit discloses overcharges by Service Provider to Owner that are (i) proven in the reasonable discretion of Owner and (ii) in excess of one half of one percent (0.5%) of the total cost of the Additional Services or Reimbursable Expenses (as the case may be), then the reasonable actual cost of Owner's audit will be reimbursed to Owner by Service Provider within thirty (30) days after receiving Owner's written notice. Any adjustments and/or records due to the overcharges will be made within a reasonable amount of time (not to exceed thirty (30) days) from presentation of Owner's findings Service Provider. Owner may deduct such reimbursement amounts from any money due or that becomes due Service Provider.

SECTION 9 - **INDEMNIFICATION**

9.1 **Bodily Injury and Property Damage**. To the fullest extent permitted by law, and as consideration for the terms and conditions of this Agreement, Service Provider agrees to release, indemnify, protect, defend with counsel approved by Owner, 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: (1) 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 (2) is caused in whole or in part by an Indemnifying Party's: (a) negligent act or omission; or (b) refusal or failure to comply with any obligation in any Contract Document; 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.

9.1.1 Service Provider shall not be obligated to indemnify the Indemnified Parties from or against a Claim resulting from Owner's negligence when such negligence is the sole and proximate cause of the Damage which is the basis of the Claim. In the event Service Provider and Owner 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 Owner under Texas law and without waiving any defenses of the Parties under Texas law.

9.2 **Intellectual Property**. Service Provider shall protect and indemnify Owner from and against all 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.

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

SECTION 10 **– INSURANCE; RISK OF LOSS**

10.1 **Coverages**. Service Provider maintain in force until Owner's Final Acceptance (as that term is defined in the Uniform General Conditions issued by the Texas Facilities Commission [the "***UGC***"]) of the final Project subject to this Agreement, the following insurance coverage in the following amounts:

TYPE OF COVERAGE	LIMITS OF LIABILITY	
Worker's Compensation	Statutory Limit - State of Texas	
Employer's Liability		
Bodily Injury By Accident	$1,000,000 Each Accident	
Bodily Injury By Disease	$1,000,000 Each Employee / Policy Limit	
Commercial General Liability	$1,000,000 Each Occurrence/ $2,000,000 Aggregate	
Comprehensive Form		
Premises/Operations		
Products/Completed Operations		
Broad Form and Third Party Property Damage		
Personal Injury		
Fire Damage	Any One Fire	$500,000
Medical Expense	Any One Person	$20,000
Comprehensive Auto Liability	$1,000,000 Combined Single Limit	
Professional Liability	$5,000,000	

10.2 **Policy Requirements**.

10.2.1 Each policy required in accordance with Section 10.1:

10.2.1.1 must expressly be primary and non-contributory with respect to Owner's insurance or self-insured retention;

10.2.1.2 must name Owner as an additional insured (with the exception of Workers Compensation, Employers Liability and Professional Liability);

10.2.1.3 must contain a complete waiver of subrogation against Owner by both Service Provider and its carrier.

10.2.1.4 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;

10.2.1.5 must be issued by an "A -" rated carrier; and

10.2.1.6 must be furnished to Owner upon Owner's request.

10.2.2 The Commercial General Liability policy shall not, whether internally or by endorsement, exclude or limit Products/Completed Operations coverage, Contractual Liability or Cross Liability.

10.3 **Deductibles**. Service Provider shall bear the cost for all deductibles and actual losses not covered by insurance required under the Contract Documents. Service Provider shall request Owner's prior written approval of any deductible in excess of $25,000, which request shall be in writing and shall be transmitted with Service Provider's most recent annual report or audited financial statement.

10.4 **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.

SECTION 11 - **MISCELLANEOUS PROVISIONS**

11.1 **Limitation of Liability**. Except for the obligation of Owner to pay Service Provider in accordance with SECTION 5 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. 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 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.

11.2 **No Waiver**.

11.2.1 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.

11.2.2 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.

11.3 **Governing Law; Venue**. This Agreement shall be construed in accordance with the laws of the State of Texas. Should litigation arise concerning all or any part of this Agreement, venue shall lie in Harris County, Texas.

11.4 **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.

11.5 **New Laws**. 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.

11.6 **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.

11.7 **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.

11.8 **Statutory Certifications**. By signing this Agreement, the undersigned certifies as follows:

11.8.1 "Under Section 231.006, Texas Family Code, Service Provider certifies that the individual or business entity named in this Agreement 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."

11.8.2 "Under Section 2155.004, Texas Government Code, Service Provider 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."

11.9 **Dispute Resolution**. Disputes arising from this Agreement will be handled pursuant to the alternative dispute resolution provisions of the UGC.

11.10 **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.

11.11 **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 will be as follows or to such other address or facsimile number that the parties may designate in writing.

If to Owner: Executive Director
Facilities _____
University of Houston System
4211 Elgin Room 122
Houston, Texas 77204
Fax:

with a copy to: General Counsel, UHS
University of Houston
311 E. Cullen Building
Houston, Texas 77204-2028
Fax: 713-743-0948

If to Service Provider:

with a copy to:

11.12 **Successors and Assigns**.

11.12.1 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.

11.12.2 Owner may sell, assign, hypothecate, pledge or otherwise transfer or dispose of all or a portion of the Site, the Project and/or Owner's rights under this Agreement in its sole discretion, without the consent of Service Provider, so long as (a) the rights and obligations of Owner under this Agreement are assigned in connection therewith, and (b) all payments due Service Provider under this Agreement have been paid current.

11.13 **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.

11.14 **Exhibits**. No provision contained in this Agreement may be modified, amended or deleted in an exhibit to this Agreement unless the exhibit refers specifically to the provision (including its Section number), explains how the provision is modified or amended or states that the provision is deleted, and is signed by Owner and Service Provider. Subject to the foregoing qualification, the exhibits listed with the Table of Contents are hereby incorporated by reference for all purposes as if fully set forth herein.

IN WITNESS WHEREOF, Owner and Service Provider have executed this Agreement the day and year first above written.

SERVICE PROVIDER:

_____ Federal Tax ID Number:

By: _____ Date:
Name:
Title:

[signatures continue on following page]

University of Houston System

By: _____ Date _____
Name:
Project Manager

By: _____ Date _____
Name: _____
Principal Project Manager

By: _____ Date _____
Name: _____
Executive Director

By: _____ Date _____
Dr. Carl Carlucci
Executive Vice Chancellor / Executive Vice President
Administration and Finance

By: _____ Date _____
Dr. Renu Khator
Chancellor/President

NOTE: When invoicing, please refer to Contract No. _____ and Account No. _____.

Note: Modification of This Form Requires Written Approval of the University of Houston's Office of General Counsel

EXHIBIT A

SERVICES

EXHIBIT B

CURRENT FORM OF PROJECT REQUEST

Date:_____ Account #_____
Contract # _____

To: *[Service Provider Project Manager]*

In accordance with the provisions of the Continuing Services Agreement dated _____ (the "***Agreement***") between the University of Houston System, as Owner, and _____, as Service Provider, Owner is contemplating _____
_____
(the "***Project***") and hereby requests your proposal to render the following Services:

In your Project Proposal (if any), please describe the services you would perform in detail, and provide an estimated schedule of the services and your 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, you will be deemed to have declined to submit a Project Proposal for this Project.

Sincerely,

_____
[name]
Project Manager
[department]

EXHIBIT C

CURRENT FORM OF PROJECT AGREEMENT

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 _____ ("***Service Provider***") dated effective as of _____ (the "***Continuing Services Agreement***"). Project Agreements become a part of the Continuing Services Agreement upon execution by both parties.

Date:_____ Account #_____
Contract # _____ Project Agreement #_____
Service Provider's Project Manager:_____

To: Services Provider

You are hereby directed 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.

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 fixed price contract. Owner will pay Service Provider the amount of _____ _____

This is not a fixed price contract. Owner will pay Service Provider an amount not to exceed _____ based on the *hourly rates* set forth on the Hourly Rate schedule attached to the Continuing Services Agreement as **Exhibit D**.

2. Reimbursable Expenses: Not to exceed $_____ 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:

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

ACCOUNT:

	Cost of Services	**Reimbursable Expenses**	**Total**
Previous Project Agreement Amount			
This Project Agreement			
Continuing Services Agreement Totals			

SERVICE PROVIDER:

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

[signatures continue on following page]

AUTHORIZED AND ACCEPTED:

University of Houston System

By: _____ Date _____
Name: _____
Project Manager

By: _____ Date _____
Name: _____
Principal Project Manager

By: _____ Date _____
Name: _____
Executive Director

By: _____ Date _____
Dr. Carl Carlucci
Executive Vice Chancellor / Executive Vice President
Administration and Finance

By: _____ Date _____
Dr. Renu Khator
Chancellor / President

NOTE: When invoicing, please refer to Contract No._____, Account No. _____ and Project Agreement No. _____.

EXHIBIT D

HOURLY RATE(S) BY TITLE

Title / Discipline	Hourly Rate

EXHIBIT E

CURRENT FORM OF DESIGN CHANGE AUTHORIZATION

RE:

Campus:

Contract No.
Account Number:
Design Change Authorization No.

Dear

You are hereby directed to perform the services as described under heading "Scope of Work" in the proposal of ("***Service Provider***") dated , a copy of which is attached for the exclusive purpose of stating the design change services to be rendered by Service Provider hereunder (the "***DCA # Services***"), which are summarized as follows:

This Design Change Authorization No. (this "***DCA***") to the referenced Agreement between the University of Houston System ("***Owner***") and Service Provider amends only the portions of the Agreement relating to the services to be provided by Service Provider under the Agreement and Service Provider's compensation therefor, and only to the extent set forth herein, and represents Owner's authorization to provide the DCA # Services and Service Provider's agreement to do so for additional compensation as set forth below.

Initial Contract Amount		**$**
Basic Services	*$*	
Reimbursables	*$*	
DCA #		**$**
Basic Services	$	
Reimbursables	$	

Revised Contract Amount (through this DCA#): $
Basic Services $
Reimbursables $

Please acknowledge Service Provider's acceptance of the terms, conditions and provisions of this DCA# by having Service Provider's authorized signatory execute and return two (2) original counterparts of this DCA# to this office for further handling. A fully executed original counterpart of this DCA# will be delivered to you.

Sincerely,

ACCEPTED:

_____
Name:
Title:
Date:

AUTHORIZED AND ACCEPTED:

University of Houston System

By: _____ Date _____
Name: _____
Project Manager

By: _____ Date _____
Name: _____
Principal Project Manager

By: _____ Date _____
Name: _____
Executive Director

By: _____ Date _____
Dr. Carl Carlucci
Executive Vice Chancellor / Executive Vice President
Administration and Finance

By: _____ Date _____
Dr. Renu Khator
Chancellor / President

NOTE: When invoicing, please refer to Contract No._____, Account No. _____ and Project Agreement No. _____.