

OWNER-ARCHITECT PROJECT AGREEMENT
(“Agreement”)

BETWEEN

THE UNIVERSITY OF HOUSTON SYSTEM
(“Owner”)

AND _____
(“Architect”)

for the following project (the “**Project**”):

Project Name: _____

Project Address: _____

Contract No.: _____

Account No.: _____

Effective Date: _____, 20____

Owner does hereby engage Architect, and Architect does hereby agree to perform for Owner, under the terms and conditions of this Agreement.

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ARTICLE 1 – DEFINITIONS; INTERPRETIVE

1.1 **DEFINITIONS.** For all purposes of this Agreement, the following definitions shall apply:

Additional Services means the Services listed and/or referenced in ARTICLE 3.

Agreement means this Owner-Architect Project Agreement and all Design Change Authorizations between Owner and Architect that may be issued subsequent to execution of this Agreement.

Applicable Law means all laws, codes, rules, regulations, judgments, ordinances and similar pronouncements of Appropriate Authorities.

Appropriate Authorities means any private, local, municipal, county, state, regional or federal authority or agency with jurisdiction over the 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.

Architect's Standard of Care is defined in Section 2.2.

Basic Services means the Services listed and/or referenced in ARTICLE 2.

Bidding and Proposal Phase means the phase or stage of the Project described in Section 2.7 below.

Bidding and Proposal Phase Services means the services identified in Section 2.7 below.

Building Information Modeling or “**BIM**” means a digital representation of physical and functional characteristics of a facility. As such it serves as a shared knowledge resource for information about a facility forming a reliable basis for decisions during its life-cycle from inception onward. A basic premise of BIM is collaboration by different stakeholders at different phases of the life cycle of a facility to insert, extract, update or modify information in the BIM process to support and reflect the roles of that stakeholder. The BIM is a shared digital representation founded on open standards for interoperability.

Change Order is defined in the UGC.

Change Proposal Request means a document generated by Architect on Owner's behalf and at Owner's request documenting Owner's proposal of a change to the Project or the Work.

Change Proposal means a document generated by Contractor in the form required by Owner proposing a change to the Project or the Work. Change Proposals may, but do not necessarily, involve proposed adjustment to the amount to be paid Contractor for the Work or extension of the time for Contractor to achieve Substantial Completion.

Construction Administration Phase means the phase or stage of the Project described in Section 2.8 below.

Construction Administration Phase Services means the services identified in Section 2.8 below.

Construction Contract means the Owner/Contractor agreement for construction of the Project.

Construction Cost Estimate means Architect's dated estimate, prepared and updated by Architect's construction cost estimating consultant(s), including the major categories of Work, of the entire Project's cost of construction including contingency with respect to each phase of development, and delivered to Owner in accordance with Section 2.2.18.

Construction Cost Limitation means Owner's estimate of the cost to build the Project. Owner may amend the Construction Cost Limitation for Owner's reasons and/or in response to the Construction Cost Estimate, by delivering written notice to Architect.

Construction Documents means the documentation prepared by Architect to be used to direct the Contractor in the construction of the Project, to estimate the cost of the Project, and to secure bids for constructing the Project. The Construction Documents shall include drawings, specifications, general conditions, supplementary general conditions, special conditions, information to bidders, bid proposal(s), and addenda developed to set forth in detail all aspects of design, function and construction. These documents, upon acceptance of a valid GMP Proposal, form the basis of the Construction Documents.

Construction Documents Phase means the phase or stage of the Project described in Section 2.6.

Construction Documents Phase Services means the Services required in Section 2.6.

Construction Manager means a contractor appointed to serve as construction manager for and on behalf of Owner for this Project in accordance with Section 51.781 or Section 51.782 of the *Texas Education Code*.

Contractor means the entity awarded the contract to construct the Project.

Design Change Authorization means the Parties' agreement to modify Project scope or quality (including, by way of example but not of limitation, by incorporation of Additional Services), which agreement shall be on Owner's form.

Design Development Documents means the items described in Section 2.5.2.

Design Guidelines means the University of Houston Campus Design Guidelines and Standards located online at <http://www.uh.edu/plantops/departments/fpc/owners-design-criteria/index.php>.

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 Architect's employees directly engaged on the 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 the 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 Architect and its consultants including, but not limited to, Architects, officers, principals, associates, Architect, CADD technicians, engineers, designers, project managers, draftspersons, and specifications writers, who are performing consultation, research or design, or who are producing drawings, specifications, plans, or other documents pertaining to the Project, or who are performing services during construction at the Property that are directly attributable to, and necessary for, such construction. The DSE for the personnel directly engaged on the Project is set forth in Exhibit A to this Agreement.

Facility Program means Owner's initial description of the Project scope, preliminary Construction Cost Limitation, schedule, criteria for design objectives, characteristics and constraints, space requirements and relationships, Site requirements, existing facilities, and desired special components, systems and equipment. The Facility Program is incorporated by reference as if fully set forth in this Agreement.

Floor Area Calculations means the calculation and tabulation of both gross and assignable floor areas as defined by the most current version of the Texas Higher Education Coordinating Board Facilities Room Inventory Report, which is located and maintained online at <http://www.thecb.state.tx.us/reports/PDF/1681.PDF?CFID=8012590&CFTOKEN=45742903> including copies of Computer-Aided Design and Drafting ("CADD") files with all such measurements utilizing polylines and a room attribute "block" provided by Owner and prepared in accordance with the University of Houston CAD Standards Manual located online at <http://www.uh.edu/plantops/departments/fpc/owners-design-criteria/index.php>.

GMP Proposal means the guaranteed maximum price proposal submitted by Contractor to Owner for construction of the Project in accordance with the Construction Documents.

HUB means Owner's Historically Underutilized Business Policy.

Major Categories Of Work means those applicable categories of construction work necessary for completion of construction of the entire Project and may include, but not be limited to, the following construction categories: demolition, Site preparation, grading and earthwork, general construction, heating, ventilating, air-conditioning, plumbing, electrical, voice & data cabling, security features, elevators and Site improvements.

Owner's Designated Representative is defined in Section 5.1.

Principal is defined in Section 4.1.

Project means “Project” as defined in the UGC with respect to the Project identified on the title page of this Agreement.

Project Construction Budget means the latest Construction Cost Estimate approved by Owner at any applicable phase of the Project.

Project Team means Owner, Contractor, Architect, and any separate contractors and other consultants (including Consultants) employed for the purpose of programming, design and construction of the Project. The composition of the Project Team may vary at different phases of the Project. The Project Team will be designated by Owner and may be modified from time to time by Owner.

Record Drawings is defined in Section 10.5.

Reimbursable Expenses is defined in Section 6.3.

Reimbursable Expenses Cap means _____
(_____).

Schedule is defined in Section 2.3.

Schematic Design Documents is defined in Section 2.4.

Services means all services required of Architect under this Agreement.

SGC means the University of Houston Supplemental and Special Conditions, as they may be amended, modified, or revised and published by Owner at <http://www.uh.edu/legal-affairs/contract-administration/contract-documents/department-specific-contracts-and-forms/index.php#facilities>.

Site is defined in the UGC.

Substantial Completion is defined in the UGC.

Submission Schedule is defined in Section 2.2.18.

UGC means the current version of the State of Texas Uniform General Conditions for Construction Contracts published by the Texas Facilities Commission.

Work means the provision of all services, labor, materials, supplies, and equipment that are required or reasonably inferable to construct the Project in strict accordance with the requirements of the Construction Documents (as such may be modified or amended).

1.2 INTERPRETIVE. The provisions of the UGC and SGC governing the responsibilities of the “Architect/Engineer” or “A/E” apply to Architect and are incorporated herein for all purposes; provided, however, to the extent the terms of this Agreement conflict with the UGC and/or the SGC, the terms of this Agreement will control.

ARTICLE 2 – ARCHITECT’S BASIC SERVICES

2.1 MATERIAL INDUCEMENT TO OWNER. Architect agrees and acknowledges that Owner is entering into this Agreement in reliance on Architect’s represented expertise and special and unique abilities to provide the Services. Architect accepts the relationship of trust and confidence established between it and Owner by this Agreement and covenants to use Architect’s best professional efforts, skill, judgment, and abilities in performing the Services, and to further the interests of Owner in accordance with the usual and customary standards of care, skill and diligence of Architect’s profession, consistent with good architectural practices for architectural firms that provide professional design services for projects that are similar in size, scope and budget to the Project, and in compliance with all Applicable Law. Architect shall be solely responsible for the full cost of correcting any non-conforming Services, including any rendered by any Consultant(s) and any others who have acted in reliance thereon.

2.2 GENERAL RESPONSIBILITIES. Architect shall design the Project such that it can be built, with alternates, within the Project Construction Budget at or under the Construction Cost Limitation. By executing this Agreement, Architect acknowledges receipt and comprehension of the Construction Cost

Limitation. Architect shall allocate adequate time, personnel and resources as necessary to perform the Services. Architect shall perform the Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project and in accordance with the standards set forth in Section 2.1 (“*Architect’s Standard of Care*”). With respect to the Project and in satisfaction of the foregoing, Architect shall:

2.2.1 Manage the design of the Project to achieve the Facility Program objectives of scope and cost through completion and acceptance of the Construction Documents Phase. In this regard, Architect shall:

2.2.1.1 Chair all meetings scheduled prior to the Construction Administration Phase and promptly provide and distribute by email meeting minutes to all persons involved in the design of the Project, including (by way of example and not of limitation) the Construction Manager (if any).

2.2.1.2 Ensure coordination and inclusion of sequence of operations for all operable systems in the Project.

2.2.1.3 Utilize BIM authoring software and BIM based design processes to produce and deliver to Owner at no cost to Owner a BIM model (each, a “*Model*”) at each phase of this Project. Each Model will be published in its native file format through the Project information management system. At each phase of the Services, Architect shall conduct Model coordination, aggregation and class detection to identify and resolve conflicts in design between or among systems, structures and components prior to generating and circulating the design documents pertinent to that phase.

2.2.1.4 Be knowledgeable of BIM use for all phases of the design and utilize data, graphics and drawings derived from the Model(s) for decision-making support and construction documentation.

2.2.1.5 At no cost to Owner, furnish and deliver to Owner one (1) complete printed copy and one (1) electronic copy of each plan, drawing, specifications and schedule of every character made or furnished in connection with the Work, including the Record Drawings (in accordance with ARTICLE 10), all or which must be derived from the Models, which copies shall become the property of Owner.

2.2.1.6 Incorporate into the Models, plans, drawings, specifications and schedules of every character made or furnished in connection with the Work such changes as are necessary to satisfy Owner’s written review comments or published meeting minutes, any of which may be appealed in writing for good cause.

2.2.1.7 Distribute copies of all Models, plans, specifications and other documents for use by Architect and the Consultants to any employee, agent or Consultant requiring them, all at no cost to Owner.

2.2.1.8 Become sufficiently familiar with the existing facilities, systems and conditions at the Site so that the proposed Project will completely and properly interface functionally with them.

2.2.2 Utilize project information management software, such as Newforma Project Center, throughout the course of the Project for purposes of file sharing and document management. If Owner appoints a Construction Manager before Architect has identified such software, Architect shall cooperate with the Construction Manager to select mutually agreeable software for use through the final completion of Construction Manager’s contractual obligations to Owner. All Project documentation, such as notifications and responses for requests for information and submittals, Architect’s supplemental instructions, proposal requests, revised logs and other standard documentation must be uploaded and distributed via the information management software. The software must include an e-mail notification system and have capacity to store all posted files for a minimum of thirty (30) days. A user ID and password will be provided for all Project Team members to disseminate project

reports and information. A mutually acceptable file naming convention will be established by the Project Team prior to the commencement of the Work.

- 2.2.3 Advise Owner of any adjustments to the scope or quality of the Project necessary to comply with the Construction Cost Limitation and the Project Construction Budget at all stages of the Services.
- 2.2.4 Consult to the extent required by Owner with authorized employees, agents and/or representatives of Owner relative to the design and construction of the Project.
- 2.2.5 Coordinate the Services with services related to the Project provided by Owner and Owner's consultants, including any Construction Manager appointed by Owner.
- 2.2.6 Take reasonable precautions, including confirmation and investigation through BIM, to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Architect (by Owner or any other party) that Architect uses for the Project, and promptly alert Owner in writing of any error, omission or inconsistency in services or information, whether such services are, or information is, provided by Owner, Owner's consultant(s) (which, during the Construction Administration Phase, includes the Contractor and its subcontractors), Architect, any Consultant, or any other person retained by Architect. Architect shall identify to Owner in writing any such documents or data which, in Architect's professional opinion, are unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. Nothing shall excuse or detract from Architect's responsibilities or obligations hereunder in a case where such documents or data are furnished unless Architect advises Owner in writing that in Architect's professional opinion such documents or data are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes Architect to proceed in accordance with the documents or data as originally given.
- 2.2.7 Review Site surveys, subsoil data, and other data logs of borings, etc., and advise Owner whether such data is sufficient for the purpose of design, or if additional data is necessary before Architect can proceed with the Services.
- 2.2.8 As part of Basic Services (and not chargeable to Owner) contract for or employ all consultants necessary for the design of the Project (the "**Consultants**"), including (but not limited to) a duly licensed and registered Accessibility Specialist ("**RAS**") and providers of the following, as and when required for the timely development of the Project:
 - Mechanical, Electrical, and Plumbing Engineering Services
 - Structural Engineering Services
 - Civil Engineering Services
 - Landscape Architecture Design Services (including any irrigation)
- 2.2.9 With respect to Texas architectural Barriers Act and the Americans with Disabilities Act and any other Applicable Law pertaining to disabilities and architectural barriers (including the requirements of the Texas Department of Licensing and Regulation, collectively, "**ADA**"):
 - 2.2.9.1 Advise Owner in writing of all accessibility standards applicable to the Project;
 - 2.2.9.2 Advise Owner regarding compliance with all ADA requirements including the final call for inspection; and
 - 2.2.9.3 Attend the inspection(s) of the Project by the RAS and (a) advise Owner with respect to any RAS recommendations, and (b) assist and supervise the Contractor with any necessary corrective actions.
- 2.2.10 Coordinate the Services with the services of all consultants on the Project, including the Consultants and any consultants retained by Owner, and ensure that all such services are

appropriate for and are adequately incorporated into the design of the Project. Nothing in the foregoing shall create a contractual relationship between Architect and any consultants retained or employed by Owner.

- 2.2.11 Satisfy all requirements of Appropriate Authorities regarding the Services including, but not limited to, auditing requirements and payroll affidavits, and assist Owner in fulfilling or satisfying the applicable requirements of Appropriate Authorities regarding the design, cost, and construction of the Project including, but not limited to, disbursements made under the Construction Contract.
- 2.2.12 Comply with all requirements of the Design Guidelines, Master Specifications (located online at <http://www.uh.edu/plantops/departments/fpc/owners-design-criteria/index.php>) and the Telecommunication Infrastructure Standards (the “*Cabling Standards*,” located online at http://www.uh.edu/infotech/php/template.php?telecomm_id=37). Any proposed deviations from the Design Guidelines, Master Specifications, or Cabling Standards must be submitted in writing to Owner for approval. **Architect shall not proceed with any such deviations without the prior written approval of Owner.**
- 2.2.13 Incorporate the requirements of the Energy Conservation Design Standard for New State Buildings as administered by the State Energy Conservation Office, 34 *Texas Administrative Code*, Part 1, Chapter 19, and provide a Statement of Compliance certifying that the Project design complies with the standards **prior to** commencement of construction.
- 2.2.14 Support Owner with compliance with the requirement in *Texas Government Code* Section 2166.403(b) to verify the economic feasibility of incorporating alternative energy into the building’s design and proposed energy system.
- 2.2.15 Incorporate the Xeriscape Landscaping design requirements as adopted by the State of Texas Building & Procurement Division for Xeriscape landscaping on new construction projects, pursuant to *Texas Government Code* Section 2166.404. Architect shall provide Site analysis and design to incorporate these provisions. A summary of the Project requirements meeting these guidelines shall also be provided for the Design Development Documents submittal package.
- 2.2.16 Prior to commencement of the Services, Owner will provide any Project-specific sustainability requirements and criteria and determine the level of LEED certification to be achieved by the Project, if any. Architect will use concerted and cost effective efforts to design and construct the Project according to such LEED principles and will coordinate with Owner and its representatives in the commissioning of the Project.
- 2.2.17 In conjunction with Owner, meet as necessary with Appropriate Authorities to review the design, construction and proposed operation of the Project for compliance with Applicable Law, including, but not limited to, design and documentation of signage (which design must also comply with Owner’s then-current graphics standards).
- 2.2.18 Engage a reputable and specialized construction cost estimating consultant acceptable to Owner to prepare detailed construction cost estimates of the Project in a form acceptable to Owner following the Construction Specifications Institute Master Format (“*Construction Cost Estimates*”). Updated Construction Cost Estimates shall be included with the plans and specifications submitted by Architect to Owner for review at (a) completion of the Schematic Design Phase, (b) completion of the Design Development Phase, (c) completion of the Construction Documents Phase (the schedule set forth in items (a) through (c) is referred to, collectively, as the “*Submission Schedule*”). If the Construction Cost Estimate exceeds the Construction Cost Limitation at any time, Owner at its sole and absolute discretion will determine whether to increase the Construction Cost Limitation or require Architect to revise the Project scope or quality to comply with the Construction Cost Limitation; if Owner elects to require Architect to make such revisions, Architect will do so at no additional cost to Owner. Reductions in Project scope or quality are subject to Owner’s review and approval.

- 2.2.19 Submit documents and Models to Owner for review in accordance with the Submission Schedule and Section 10.4. Architect shall incorporate into the documents such corrections and amendments as Owner requests, unless Architect objects in writing and receives Owner's written consent not to make the changes. Architect will be responsible for any damages incurred by Owner resulting from Architect's failure to incorporate requested corrections and amendments to the documents.
- 2.2.20 Any change to the scope or quality of the Project, whether for budgetary reasons or otherwise, shall be effected by a Design Change Authorization on Owner's then-current form (as it may be modified from time to time) and in accordance with Owner's then-current procedure (as it may be modified from time to time).
- 2.2.21 Correct, at its own cost, any Services rendered by Architect and/or any Consultants that do not meet Architect's Standard of Care.
- 2.2.22 At Owner's request, coordinate the purchase of additional reprographic materials for bidding or proposal purposes or when additional review sets, in excess of those required by Section 2.6.1, are required by Owner. Architect shall present a Tax Exemption Certificate to the vendor and coordinate Owner's requirements for type, quantity and invoice billing. When requested, Architect will account to Owner for all additional materials ordered by Owner through Architect as Owner's agent and shall distinguish between those materials ordered on behalf of Owner without sales tax and any other copies thereof that Architect, or others, may order and pay for which includes sales tax, on its own or their behalf. Architect shall forward to Owner the original vendor's invoice for materials purchased by Owner and delivered to Architect as Owner's agent.
- 2.2.23 If the Project is subject to Texas Commission on Environmental Quality ("**TCEQ**") Regulations, employ a qualified Consultant (the "**TPDES Consultant**"), experienced in the Texas Pollutant Discharge Elimination System ("**TPDES**") requirements and in the best management practices used at construction sites to control erosion and sediment, to prevent the discharge of pollutants and to prevent or mitigate the impacts of storm water runoff on water quality (collectively "**BMPs**"), which TPDES Consultant shall be approved in writing in advance by Owner, to provide expertise with respect to Texas Commission on Environmental Quality regulations and BMPs through all phases of the Project. The TPDES Consultant's services shall include, without limitation, (1) recommending structural and non-structural BMPs to Architect or other subcontractors under this Agreement for civil and landscape site coordination, (2) preparing Storm Water Pollution Prevention Plans ("**SWPPPs**") including any BMP drawings and details, (3) as requested in writing by Owner, assisting in the updating of SWPPPs and all other permit documentation required by the TCEQ for the Project, and (4) drafting technical specifications governing the Contractor's obligations under the applicable TPDES regulations and the TCEQ General Permit for Storm Water Discharges From Construction Sites ("**General Permit**") No. TXR 150000 and governing the Contractor's recommended courses of action under BMPs. The TPDES Consultant shall ensure that the SWPPP has been prepared for the Site in accordance with the General Permit and that such plan complies with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits, including, without limitation, any TPDES permit issued to The University of Houston component on which the Site is located. The TPDES Consultant, through Architect, shall determine whether General Permit coverage is required, and, if so, shall advise Owner of Owner's obligations under the General Permit and shall advise Owner of the Contractor's obligations under the General Permit. If there are multiple projects proposed to be conducted concurrently in contiguous areas and general permit coverage is required, the TPDES Consultant shall advise Owner of Owner's obligations and prepare one SWPPP for the entire area encompassing all projects and shall amend such SWPPP at the request of Owner to ensure that the Contractor of each project can comply with TPDES requirements and BMPs.

- 2.2.24 Architect shall prepare, based on Models, and submit to Owner a calculation and tabulation of both gross and assignable floor areas as defined by the most current version of The Texas Higher Education Coordinating Board Facilities Inventory Procedures Manual, including copies of Computer-Aided Design and Drafting (“CADD”) files with all such measurements utilizing polylines and a predefined room attribute “block” provided by Owner. Architect shall submit an estimate of the gross and assignable areas with the Schematic Design Phase submission, and shall submit calculations for the Project gross area and assignable area with the Design Development Phase and the Construction Document Phase submissions. Architect shall submit to Owner the calculations in both a bound report format and AutoCAD files for each floor containing polylines and completed room attribute blocks. Architect shall design the Project so that the assignable to gross square foot ratio for the Project exceeds 60% to the maximum extent possible. Architect shall maintain and update the Floor Area Calculations and all associated CADD files throughout the course of the Project to reflect any changes made to the design in later stages of the Project, and submit to Owner a final document during Project close-out. All CADD drawings and files shall be developed and maintained in accordance with the University of Houston CAD Standards Manual located online at http://www.uh.edu/plantops/fpc_cad_standards.html.
- 2.2.25 Make recommendations to Owner for the correction of deficiencies in construction of the Project at all times prior to the expiration of the Contractor’s Warranty period of the Project.
- 2.2.26 Attend all regularly scheduled meetings during the Construction Administration Phase and advise Owner on matters such as construction phasing and scheduling, bid or proposal alternates, special allowances, liquidated damages, the Construction Contract time period, and other construction issues appropriate for the Project.
- 2.2.27 Coordinate Basic and Additional Services with any Construction Manager.
- 2.2.28 Participate in the development, documentation and review of the GMP Proposal as Owner’s advocate and representative in accordance with the provisions of the Construction Contract so as to confirm that the Construction Documents, when complete, reflect all qualifications, clarifications and assumptions contained within the GMP Proposal.
- 2.2.29 If Owner appoints a Construction Manager to the Project, deliver (at no additional cost to Owner) a compact disc containing the approved design documents (including Models) to the Construction Manager at the conclusion of each phase of the Services to assist the Construction Manager in fulfilling its responsibilities to Owner.
- 2.2.30 If Owner appoints a Construction Manager to the Project, cooperate with Construction Manager to jointly provide a monthly written status report stating the progress of the incorporation into the Construction Documents of the qualifications, clarifications, assumptions, exclusions and value engineering and all other requirements of the GMP Proposal accepted by Owner.
- 2.2.30.1 If Owner does not accept the GMP Proposal, Architect shall participate with Owner and Construction Manager in constructability reviews and shall revise the Construction Documents as necessary to permit agreement.
- 2.2.31 If Owner assigns a Construction Manager to the Project, reconcile (together with Construction Manager) any differences between the Construction Cost Estimate and Construction Manager’s GMP Proposal at each phase of the Basic Services. If such reconciliation proves impossible, Architect shall deliver to Owner a written explanation of the differences with sufficient detail to permit Owner to consider all available solutions.

2.3 **SCHEDULE OF SERVICES.** Concurrently with the execution of this Agreement, Architect shall Prepare and submit to Owner for approval a schedule for the performance of Architect’s Services that shows the order in which Architect proposes to carry out Architect’s Services (the “*Schedule*”). The Schedule shall:

- 2.3.1 be in the form of a progress chart indicating all major tasks to be accomplished and the time for starting and completing the task; and
- 2.3.2 include allowances for periods of time required for Owner's review, for the performance of Owner's consultants, and for approval of submissions by Appropriate Authorities having jurisdiction over the Project.

Once approved by Owner, time limits established by the Schedule shall not be exceeded by Architect or Owner, except for reasonable cause; provided, however, reasonably foreseeable occurrences, such as typical weather conditions, vacation time, and standard attrition, shall not constitute reasonable cause for purposes of extending time limits established by the Schedule. The initial Schedule is attached to this Agreement as Exhibit B. If Architect determines that the Schedule should be adjusted at any point prior to commencement of construction of the Project, then Architect shall submit to Owner a revised Schedule and an explanation of the change(s) and the reason(s) for the change(s) for Owner's written approval. If approved in writing by Owner, the revised Schedule shall replace the prior Schedule for all purposes under this Agreement.

2.4 SCHEMATIC DESIGN PHASE SERVICES. Architect shall review the Facility Program and promptly advise Owner in writing either: (a) that the Facility Program is complete and satisfactory; or (b) of any revisions or clarifications Architect determines necessary or advisable to the Facility Program. If Architect proposes any such revisions and/or clarifications, Owner shall promptly advise Architect in writing whether Owner approves any or all of the revisions and/or clarifications. The ***Schematic Design Phase*** will not commence until (x) Architect has advised Owner that the Facility Program is satisfactory under clause (a) or Owner has approved Architect's proposed revisions and/or clarifications under clause (b) of this Section 2.4, and (y) Architect's receipt of Owner's written authorization to proceed with Schematic Design. During the Schematic Design Phase, Architect shall provide the following Services (the "***Schematic Design Services***"):

- 2.4.1 Prepare sufficient alternative approaches utilizing BIM for design and construction of the Project to satisfy Owner's project requirements and, at completion of this phase, submit Schematic Design Documents derived from the Model(s).
- 2.4.2 Develop and review with Owner alternative approaches to design and construction of the Project illustrating the scale and relationship of the Project components sufficient to enable Owner, Architect and Contractor to agree on the most appropriate and cost-effective preliminary design.
- 2.4.3 Prepare Schematic Design Documents (defined below) for Owner's approval. Preliminary selections of major building systems and construction materials must be noted on the drawings or otherwise described in writing. "***Schematic Design Documents***," at a minimum, includes outline specifications indicating architectural, structural, mechanical, and electrical systems and materials proposed, the Floor Area Calculations, drawings and other documents including a site plan, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches or digital modeling.
- 2.4.4 The schematic design documents shall incorporate all feasible and appropriate environmentally responsible design alternatives, such as material choices and building orientation, taking into account the value of alternative materials, building systems and equipment, together with other considerations based on the Program and aesthetics in developing a design for the Project that is consistent with Owner's Program and Schedule.
- 2.4.5 Architect shall provide the Construction Manager (if any) with electronic copies of documents and data files derived from the Model(s) to assist the Construction Manager in fulfilling its responsibilities to the Owner. Architect shall utilize the Model(s) to support the review process during the Schematic Design Phase.
- 2.4.6 Upon completion of the Schematic Design Documents, Architect will prepare the Construction Cost Estimate. If the Construction Cost Estimate (including contingency) exceeds the then-current Project Construction Budget by more than five percent (5%), then

Owner may, at its discretion, (a) give written approval of an increase in the Project Construction Budget, or (b) require Architect to revise the scope of the Project or its quality, or both, so as to reduce the Construction Cost Estimate, in which case Architect shall, at its expense and at no cost to Owner, modify the Schematic Design Documents, in order to bring the Construction Cost Estimate within the Project Construction Budget.

2.5 DESIGN DEVELOPMENT PHASE SERVICES. The *Design Development Phase* shall not begin unless and until Owner delivers to Architect written approval of the Schematic Design Documents and written instruction to proceed with Design Development Phase Services. Should Architect perform any Services after submitting the Schematic Design Documents to Owner for approval but prior to receiving Owner's approval for same, such Services shall be at Architect's sole cost and expense and not chargeable to or payable by Owner. During the Design Development Phase, Architect shall provide the following Services (the "*Design Development Phase Services*"):

2.5.1 Prepare and submit to Owner and, at Owner's option, to Construction Manager, for Owner's approval design development documents based on the approved Schematic Design Documents and any adjustments to the Facility Program or Construction Cost Limitation authorized in writing by Owner. The design development documents shall incorporate the GMP Proposal approved by Owner, and shall fix, illustrate and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials, Site development and such other elements as may be appropriate and must consist of Models, drawings and other documents including plans, sections, elevations, typical construction details and diagrammatic layouts of building systems. The design development documents shall also include preliminary specifications that identify major materials and systems and establish in general their quality levels. In addition to the foregoing, the design development documents shall include:

2.5.1.1 presentation materials, including finish and material boards and rendered plans, elevations, sections and perspective views as necessary to illustrate the final design; and

2.5.1.2 preliminary recommended furniture layouts for all spaces where it is important to substantiate the fulfillment of Facility Program space requirements, or to coordinate with specific architectural, mechanical and electrical elements.

If Owner instructs Architect to deliver the documents identified in this Section to anyone (including, for example, Construction Manager) in addition to Owner, the cost of reproducing and delivering such documents shall be a Reimbursable Expense.

2.5.2 Prior to presenting design development documents to Owner for approval, demonstrate and provide written opinion to Owner that all major conflicts, clashes, and/or collisions have been removed and resolved. The design development documents derived from the Models, once approved by Owner, are referred to in this Agreement as the "*Design Development Documents*."

2.5.3 Direct the preparation of a detailed Construction Cost Estimate to confirm compliance with the then-current Project Construction Budget and include it with the completed Design Development Documents. Architect shall advise Owner of any adjustments to the project scope necessary to align the cost estimate and the project budget with the established Construction Cost Limitation and revise the Design Development Documents as may be required.

2.5.4 Upon Owner's written request (as a Reimbursable Expense), prepare presentation materials including an animation derived from the Models at the completion of the Design Development Phase. If further requested by Owner in writing, Architect shall present same to Owner's Board of Regents.

2.6 CONSTRUCTION DOCUMENTS PHASE SERVICES. The Construction Documents Phase (herein so called) shall not begin unless and until Owner approves the design development documents and delivers to Architect written instruction to proceed with the Construction Documents Phase Services. Should Architect perform any Services after submitting the design development documents to Owner for

approval but prior to receiving Owner's approval for same, such Services shall be at Architect's sole cost and expense and not chargeable to or payable by Owner. During the Construction Documents Phase, Architect shall provide the following Services (the "**Construction Documents Phase Services**"):

- 2.6.1 Prepare, based on the Design Development Documents, coordinated Models, and any further adjustments authorized in writing by Owner in the Schedule, the scope or quality of the Project, or in the Project Construction Budget, and deliver to Owner and to Construction Manager (if any) one (1) complete hard copy set and one (1) complete electronic set of Construction Documents derived from Models for Owner's review and approval. Architect shall use Models to support the construction document development. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of drawings and specifications setting forth in detail the quality levels of materials and systems (including, by way of example and not of limitation, sequence of operations for all operable systems) and other requirements for the construction of the Work, and shall comply in all respects with Applicable Law. Notwithstanding anything to the contrary contained herein, the cost of reproduction and delivery to Construction Manager of documents in accordance with this Section 2.6.1 shall be a Reimbursable Expense.
- 2.6.2 If requested by Owner, Participate in a final review of the Construction Documents and Models with Owner and its Construction Manager (if any) at a location selected by Owner.
- 2.6.3 Assist Owner and any Construction Manager in preparing all necessary bidding information, bidding forms, and RFP information and forms.

2.7 **BIDDING AND PROPOSAL PHASE SERVICES.** The Bidding and Proposal Phase (herein so called) shall not commence unless and until Owner's written (a) acceptance of the Construction Documents and (b) approval of the mutually established Construction Cost Limitation. During the Bidding and Proposal Phase, Architect shall provide the following Services (the "**Bidding and Proposal Phase Services**"):

- 2.7.1 Assist Owner and any Construction Manager in obtaining and evaluating bids or proposals, and in awarding contracts for construction, including preparation for and attendance at Pre-bid or Pre-proposal Conferences and HUB meetings. Architect shall answer inquiries from bidders and proposers at Owner's request, and shall prepare and issue any necessary addenda to the bidding or proposal documents. Architect shall maintain a register of bid and proposal documents, distribute documents to bidders, proposers, and plan rooms, and obtain and administer deposits. Architect shall attend and participate in all bid openings at Contractor's office.
- 2.7.2 Investigate the qualifications of apparent low bidders or proposers and inform Owner in writing of its findings and recommendations. For proposers selected by qualifications and by competitive sealed proposals, Architect shall investigate qualifications and other pertinent proposal information and inform Owner in writing of its findings and recommendations.
- 2.7.3 In the event the best value proposal received for the Project exceeds the Construction Cost Limitation established at the completion of the Construction Document Phase, revise the drawings and specifications as necessary to bring the cost of the Project within the Construction Cost Limitation if so directed by Owner, at no cost to Owner. Notwithstanding anything to the contrary contained in this Agreement, Owner reserves the right to accept a proposal and award a construction contract that exceeds the Construction Cost Limitation, if such award is determined by Owner to be in Owner's best interest.

2.8 **CONSTRUCTION ADMINISTRATION PHASE SERVICES.** The Construction Administration Phase (herein so called) shall commence upon Owner's award of the Construction Contract and Owner's issuance to Architect of a written notice to proceed with Construction Administration Phase Services, and shall end upon the later of (a) sixty (60) days after final payment is made by Owner to Contractor, and (b) the date Architect has satisfactorily performed all of the Services. Architect and the Consultants shall have

access to the Site and the Work at all times during the Construction Administration Phase. During the Construction Administration Phase, Architect shall provide the Services required of the “Architect/Engineer” or the “AE” under the UGC and SGC, as well as the following listed Services (collectively, the “*Construction Administration Phase Services*”):

- 2.8.1 Participate in a pre-construction conference.
- 2.8.2 As Owner’s representative during the construction of the Project, advise and consult with Owner and serve as liaison between Owner and Contractor for all purposes including, but not limited to, issuing all instructions from Owner to Contractor and receiving all communications from Contractor to Owner; provided, however, Owner may, at its discretion, communicate directly with Construction Manager (if any). Architect’s authority to act on behalf of Owner shall be to the extent provided in the Construction Documents and may not be restricted, modified, or extended without Owner’s written instruction to such effect, which Owner may issue at Owner’s sole discretion.
- 2.8.3 Review Contractor’s list of proposed subcontractors for the Work, and Contractor’s initial administrative submittals for Project schedule, schedule of values, submittal schedule, and equipment matrix to establish the appropriate basis for construction monitoring, payment processing, and system commissioning. Architect shall advise Contractor in writing of any necessary revisions to the documents submitted by Contractor and recommend acceptance of such documents by Owner as and when appropriate. Architect shall review the periodic updates of all schedules submitted or provided by Contractor and advise Owner and Contractor of any deviation from the scheduled progress and/or cost of the Work.
- 2.8.4 Monitor progress of construction and coordinate with Contractor to prepare and comply with a schedule for completion of construction and of professional services for the Project, including the Services.
- 2.8.5 Together with any necessary or appropriate Consultant(s), visit the Site and the Work at intervals appropriate to the stage of construction to determine if the Work is proceeding in accordance with the Construction Documents and the schedule of the Work, and to guard Owner against defects and deficiencies in the Work. Architect shall issue to Contractor, with a copy to Owner, a field report noting its observations within three (3) days of each visit.
 - 2.8.5.1 Architect shall attend and participate in concealed space inspections, systems start-up inspections, and all inspections through the Final Inspection (as defined in the UGC). Architect shall prepare punch lists and follow-up observation on the punch lists as may be required, shall conduct a final observation of the Project and shall prepare a statement of Final Acceptance of the Work addressed to Owner.
 - 2.8.5.2 Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. These shall remain the Contractor’s sole responsibility. Architect shall not be responsible for the Contractor’s failure to carry out the Work in accordance with the Construction Documents, except that it shall be Architect’s responsibility to make known to Owner any such failure to perform. Written notice of such failure shall be delivered to Owner within two (2) days from time of discovery.
- 2.8.6 In addition to the Site visits required pursuant to Section 2.8.5 above, visit the Site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant Work activities and for formal inspections of the Work.
- 2.8.7 Determine, after review with Owner, the amount owing to Contractor and certify the Contractor’s payment requests in such amounts. The certification of the Construction Payment Requests shall constitute Architect’s representation to Owner, based on Architect’s observations at the Site and on the data comprising the Request, that the Work has progressed to the point indicated, that to the best of Architect’s knowledge, information, and belief, the quality of the Work is in

accordance with the Construction Documents, and that Contractor is entitled to payment in the amount certified.

2.8.8 Provide technical advice, clarify and interpret the Construction Documents and make all revisions and changes to the Construction Documents as necessary to accomplish their intent or, with Owner's prior written consent, to correct errors, conflicts, or omissions, advise Owner's Designated Representative of all decisions regarding errors or conflicts in, or omissions from, the Construction Documents prior to rendering corrections to Contractor, judge Contractor's performance under the Construction Documents, and render written recommendations within a reasonable time on all claims, disputes and other matters in question between Owner and Contractor relating to execution or progress of the Work or the interpretation of the Construction Documents. Architect shall issue the modifications or revisions to the Construction Documents authorized by this Section 2.8.8 in writing in the form of Architect's supplemental instructions, clarifications, or such other document best suited to accomplish such modifications or revisions.

2.8.8.1 Architect shall review and respond to requests for information about the Construction Documents. The Construction Documents shall contain clear instructions for submission of requests for information, including (by way of example and not of limitation) that each must specify the specific Construction Document that requires clarification and the nature of the clarification required. Architect shall respond to requests for information completely and in accordance with Section 2.8.13, which response may require supplemental Construction Documents.

2.8.8.2 Subject to Owner's written approval, Architect's decisions in matters relating to aesthetic effect shall be final if consistent with and reasonably inferable from the intent of the Construction Documents.

2.8.8.3 If directed by Owner, Architect shall review and evaluate cost saving proposals submitted by Contractor, subcontractors, suppliers and/or manufacturers and shall make any necessary revisions to the Construction Documents in accordance with Section 2.8.8.4.

2.8.8.4 All proposed changes to Construction Documents, regardless of how initiated, shall be completely identified and defined in the document depicting them as to scope of Work added, removed, or changed. Architect may mark the original copies of the Construction Documents to show such changes, provided that all such revisions shall be permanently recorded on the Record Drawings. Such revisions shall be clearly indicated and a current revision date shall be included on the reproducible copy. Changes to the specifications shall be consecutively numbered and dated. All changes to design documents or specifications will be identified with date of change, revision number and other customary identification references. Areas changed on drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.

2.8.9 Provide updated documents derived from the Models at each Project Team meeting and when requested by Owner in writing.

2.8.10 Following written notice to Owner, reject Work that, in Architect's judgment, does not conform to the Construction Documents ("**Nonconforming Work**").

2.8.11 Require additional inspection or testing of all or any portion of the Work, whether or not such Work is fabricated, installed or completed, if Architect considers it necessary or advisable to ensure that the Work is consistent with the letter and/or intent of the Construction Documents. Neither Architect's authority under this Section 2.8.11, nor Architect's good faith decision either to exercise or not to exercise such authority shall give rise to a duty or responsibility of Architect to Contractor or its subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work, nor shall it excuse Contractor or its subcontractors, material and equipment suppliers,

their agents or employees or other persons performing portions of the Work from its or their obligations with respect to the Work.

- 2.8.12 Review for compliance with the Construction Documents, and take any appropriate action with respect to, all Contractor submissions (including, but not limited to, schedules, shop drawings, laboratory reports, samples, fabrication models and drawings, erection and setting drawings, wiring and control diagrams, schedules, list of materials and equipment, and other descriptive data pertaining to materials or equipment). Architect shall complete such review so as not to delay unreasonably the progress of the Project, and in any event in compliance with Section 2.8.13.
- 2.8.13 Act with reasonable promptness, but in any event within ten (10) business days after receipt, on submittals and requests for information so as to cause no delay to Contractor's scheduled progress. Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Architect's review and approval shall not constitute approval of any construction means or methods.
- 2.8.14 Review and advise Owner in writing as to the acceptability of substitutions proposed by Contractor.
- 2.8.15 Assist Owner in the review of, and make recommendations to Owner with respect to, Contractor's Change Proposals or claims for additional time or costs. Architect shall prepare Change Order Proposals for Owner's approval and execution in accordance with the Construction Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time (as those terms are defined in the Construction Contract) which are not inconsistent with the intent of the Construction Documents.
- 2.8.16 Receive, review, acknowledge compliance of, and deliver to Owner written guarantees and warranties, operating and maintenance instructions, manuals brochures, diagrams, and other Project close-out documentation provided by Contractor as required in the UGC and specifications. As necessary, Architect shall require revisions and resubmissions of Project close-out documents.
- 2.8.17 Review as-built drawings during the course of the Work to ensure that the drawings are being updated and are reasonably correct.
- 2.8.18 Within ninety (90) days after Substantial Completion, deliver to Owner the Record Drawings as required by Section 10.1 below.
- 2.8.19 Upon Final Completion, revise the Models and the drawings and specifications derived from the Models to incorporate all Addenda, Change Orders and any modifications recorded by the Contractor on the as-built drawings maintained at the Site. Architect shall label the revised drawings and specifications as "Record Drawings" and shall deliver copies to Owner for record purposes as follows:
 - 2.8.19.1 One (1) copy of electronic media in Revit "RVT" digital format and "AutoCAD" format.
 - 2.8.19.2 One (1) reproducible mylar film and one (1) bond paper copy. Sepias are not acceptable.
 - 2.8.19.3 Electronic versions of specifications in Microsoft Word format and Schedules and equipment and product data shall be in Microsoft Excel format on CD-ROM/DVD.
 - 2.8.19.4 CD-ROM/DVDs shall be labeled with the Project Name and Agreement Number indicated on the first page of this Agreement and contain an index or contents file.

ARTICLE 3 – ADDITIONAL SERVICES

3.1 GENERAL. Prior to commencing any Additional Service not listed in Section 6.1, Architect shall submit to Owner an Additional Services proposal describing, in detail, (a) the nature and scope of the Additional Services, (b) the basis upon which Architect believes such services constitute Additional Services rather than Basic Services, (c) the fee, calculated in accordance with Section 6.2, and Reimbursable Expenses for Architect's performance of the Additional Services, and (d) a proposed schedule for performance of the Additional Service. If Architect's Additional Services proposal is satisfactory to Owner, Owner shall prepare and deliver to Architect for signature a Design Change Authorization documenting the Parties' agreement regarding the Additional Services.

3.2 ADDITIONAL SERVICES. Except to the extent required as part of Basic Services, the following services, if requested by Owner's Designated Representative in writing, are "**Additional Services**":

- 3.2.1 Prepare a comprehensive Facility Program.
- 3.2.2 Provide financial feasibility or other special studies other than as they relate to energy conservation and guaranteed savings, or the cost of the Project.
- 3.2.3 Provide planning surveys, Site evaluations, environmental studies or comparative studies of prospective sites for the Project.
- 3.2.4 Provide services related to future facilities, systems and equipment, including but not limited to, information technology, which are not intended to be incorporated during the Construction Administration Phase.
- 3.2.5 Make detailed investigation of existing conditions or facilities or to make measured drawings thereof, other than to verify the accuracy of drawings or other information furnished by Owner.
- 3.2.6 Coordinate Work performed by Owner's separate contractors or by Owner's own forces.
- 3.2.7 Provide Services for planning tenant or rental spaces.
- 3.2.8 Revise all or any of the Construction Documents when such revisions are inconsistent with written approvals or instructions previously given by Owner or due to changes approved by Owner and not due to errors or omissions of Architect.
- 3.2.9 Revise drawings, specifications or other documents because of unforeseeable enactment or revision of Applicable Laws subsequent to the preparation of such drawings, specifications or other documents.
- 3.2.10 Investigate, survey, value, inventory or make detailed appraisal of existing facilities, except as necessary or appropriate for the performance of Basic Services.
- 3.2.11 In the event fire or other casualty not caused in whole or in part by Contractor (including its subcontractors, agents, representatives and vendors) damages all or any portion of the Work during construction, consult with Owner concerning replacement of such damaged Work, and furnish services as may be required in connection with the replacement of such Work.
- 3.2.12 Provide Services to Owner after Final Payment or expiration of the Warranty (as defined in the UGC), whichever is later.
- 3.2.13 Appear as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding. In this context, Architect's reasonable preparation for such appearance shall also be billed as part of the Additional Service.
- 3.2.14 Retain a Hazardous Material Abatement Consultant to provide hazardous material abatement expertise (including, but not limited to, asbestos and lead) from the Schematic Design Phase through the Construction Administration Phase of the Project. Any Hazardous Material Abatement Consultant retained by Architect shall be a Consultant for all purposes under this Agreement

3.2.14.1 Architect shall select the Hazardous Material Abatement Consultant on the basis of competence and qualifications pursuant to *Texas Education Code* Section 51.780(f)(1) from a list of approved consultants provided by Owner. Consultant shall review Owner provided surveys, make recommendations regarding the need for additional surveys, develop design and cost alternatives for hazardous material abatement, prepare plans and specifications to include abatement in the general construction scope of work, provide a licensed individual to monitor hazardous material removal as required by State and EPA guidelines, and prepare a final abatement report. Architect shall provide Owner with a written itemized cost proposal to provide Hazardous Material Abatement Consulting services, including coordination of Architect. Hazardous Materials Abatement insurance shall be provided by Architect and coverage for this service will not be included in any Owner provided insurance program.

3.2.15 Provide commissioning services conforming with U.S. Green Building Council criteria.

3.2.16 If Owner elects to pursue LEED certification, registration and documentation for the Project, design the Project to meet or exceed LEED Silver certification requirements, including any energy modeling and/or daylighting studies, as established by the United States Green Building Council (the “*USGBC*”). The LEED Green Building Rating System and other similar environmental guidelines (collectively “*LEED*”) employs strategies aimed at improving performance across all the metrics that measure building performance, including energy savings, water efficiency, carbon dioxide (CO₂) emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impact. In addressing these guidelines, Architect shall perform its services in accordance with that degree of skill and care ordinarily exercised by similarly situated members of Architect’s profession involved in the design of similar projects in the same locale as the Project. Architect shall submit to Owner for reimbursement as Reimbursable Expenses all fees required by the USGBC to certify, register and document the Project.

3.2.17 Retain reputable, qualified expert consultants for any of the following:

- Audio-Visual/Data and Telecommunications Engineering Services
- Acoustical Design Services
- Furniture, Furnishings and Equipment Design
- Security Planning Services
- Feasibility Studies
- Traffic Studies and Traffic Control Planning
- Branding and Wayfinding Graphic Design Services
- Commercial Kitchen Design
- Laboratory Equipment Planning Services
- Lighting Design

When retained by Architect, each such expert shall be a Consultant for all purposes under this Agreement.

ARTICLE 4 – STAFFING AND AUTHORITY

4.1 **ARCHITECT’S STAFF.** Architect shall submit, for Owner’s approval, a team or staffing proposal for the Project, complete with job description, names and previous experience of all design personnel. Architect’s senior principal responsible for managing the Project (the “*Principal*”) and Architect’s program manager for the Project (the “*Project Manager*”) are identified in Exhibit A. Architect shall not replace the Principal, the Project Manager or (after Services have commenced) any design personnel without Owner’s prior written approval. So long as his or her performance remains acceptable to Owner, the Project Manager will lead Architect’s day-to-day Project team from the beginning of design through the completion of construction, will remain in charge of architectural services, will act on behalf of, and bind, Architect with respect to all stages and phases of the Services, and will be available as required for the benefit of the Project and Owner.

4.2 **ARCHITECT'S AUTHORITY.** Architect shall have the authority to act on behalf of Owner only to the extent provided in this Agreement, as it may hereafter be amended, modified or revised in a writing signed by Owner and Architect. Under no circumstances shall Architect contract, negotiate or make commitments with any third party (including any governmental authorities) with respect to the Project without the prior written consent of Owner. Architect shall not order corrective Work without Owner's prior written approval.

4.3 **CONSULTANTS.** Architect 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. Architect shall provide to Owner promptly after execution a copy of each executed agreement with its Consultants. Architect hereby agrees to include a provision allowing Architect to assign the contract to Owner or Owner's designee without the Consultant's consent in each contract with Consultants for Services. Architect 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.

4.3.1 Engineer Consultants must be licensed and registered in the State of Texas to practice in the field for which they are retained by Architect, and must sign and stamp their reports regarding the Work and the Project, including conditions at the Site.

ARTICLE 5 – OWNER'S RESPONSIBILITIES

5.1 **GENERAL.** Through the Office of Facilities Planning and Construction, Owner will establish and identify the individual authorized to act in Owner's behalf with respect to the Project (the "**Owner's Designated Representative**"). Architect acknowledges that Owner may designate a Construction Manager as Owner's Designated Representative. Owner, acting through Owner's Designated Representative or otherwise, shall:

- 5.1.1 Promptly examine documents submitted by Architect and render decisions pertaining thereto to avoid unreasonable delay in the progress of the Project and of the Services. Owner's approval must be in writing and no approval may be deemed given in the absence of written approval. Owner may require Architect to halt production during design review.
- 5.1.2 Be available for Site visits and attend meetings scheduled by Architect at mutually agreeable times.
- 5.1.3 Notify Architect in writing of any design fault or defect in the Project or conflict in the Construction Documents of which Owner becomes aware or receives notice.
- 5.1.4 Promptly notify Architect of any direct communications that may affect the Services.
- 5.1.5 Provide necessary forms of contracts, bonds, General Conditions of the Construction Contract, and advertisement for bids.
- 5.1.6 Provide to Architect a copy of the executed Construction Contract, including all exhibits.
- 5.1.7 Notify Architect in writing of any deficiencies in materials or workmanship discovered in the Work during Contractor's warranty period.
- 5.1.8 Make payments in accordance with ARTICLE 7 below.

Notwithstanding anything to the contrary contained herein, Owner's compliance with the provisions of this Section 5.1 shall in no way relieve Architect from any duty or responsibility under the terms of this Agreement or waive any rights, claims or remedies of Owner.

5.2 **FACILITY PROGRAM.** Owner will either provide a Facility Program or request that Architect prepare a Facility Program in accordance with Section 3.2.1. If Architect prepares the Facility Program, then Owner will review the Facility Program when completed and then determine either to proceed with the Project and authorize commencement of Basic Services or to terminate this Agreement. If Owner elects to terminate this Agreement, Owner shall have no further obligation to Architect other than payment for

Services authorized in writing by Owner and provided by Architect in accordance with the terms and conditions of this Agreement prior to such termination; conversely, if Owner elects to proceed with the Project, Owner shall issue a written notice to proceed with Basic Services to Architect.

5.3 **BUDGET; SCHEDULE.** Owner has provided to Architect the preliminary Construction Cost Limitation, which includes contingencies for bidding and changes in the Work during construction. Owner's preliminary project schedule, attached hereto as Exhibit C, sets forth Owner's plan for milestone dates and completion of the Project.

5.4 **SITE CONDITIONS.** Owner shall furnish to Architect:

5.4.1 A land survey of the Site, signed and dated by a Texas Registered Professional Land Surveyor, identifying the physical characteristics, legal limitations and utility locations. The survey and legal information shall include as applicable, grades and lines of streets, alleys, pavements and adjoining property, rights-of-way, restrictions, easements, encroachments, deed restrictions, boundaries and topography of the Site, location, dimensions and floor elevations of existing buildings, other improvements and trees, and full information concerning available service and utility lines, both public and private, above and below grade, including invert and depths.

5.4.2 All necessary structural, mechanical, chemical and other laboratory tests and all construction materials testing, inspections and reports as required by Applicable Law or the Construction Documents or reasonably requested by Architect.

5.4.3 Testing and balancing services for mechanical and hydronic systems.

5.4.4 The services of a soil engineer, when such services are deemed necessary by Owner for the Project, as well as a final geotechnical report including, but not limited to, identification of soil strata, test boring data, and recommendations for building foundations, slab and subgrade preparation.

5.4.5 Commissioning services.

Owner will require the Architect to provide the parameters that should be included in the Owner's instructions to each of the above listed service providers. The services, information, surveys and reports required by this Section 5.4 shall be furnished at Owner's expense.

5.5 **CONSTRUCTION INSPECTOR.** Owner may, at Owner's option, retain one or more construction inspectors for close, on-Site examination of the materials, structure and equipment, and surveillance of the workmanship and methods used, to ensure that the Project is reasonably accomplished in accordance with the Construction Documents and good construction practices. Owner's assignment of a construction inspector to the Site or the Project shall not relieve Architect of any obligation nor in any affect Owner's rights and remedies under this Agreement.

ARTICLE 6 – COMPENSATION

6.1 **ORIGINAL SERVICES.** Architect's compensation for Basic Services and any Additional Services listed in this Section 6.1 is the fixed-price amount of _____ Dollars and ZERO Cents (_____), payable in accordance with Section 7.1 below.

The Additional Services included in Architect's compensation are:

- 6.1.1 Architect recognizes that Basic Services normally entails reasonable changes in the Construction Documents commensurate with the size and complexity of this Project, and that reasonable changes or additions to the Construction Documents (or any of them) are likely to occur during the course of the Project. Architect therefore represents and warrants that the amount set forth in Section 6.1 contemplates and includes such changes or additions during the course of both design and construction, and that such changes or additions shall entitle Architect to no additional compensation.
- 6.1.2 Upon receipt of Owner's notice that Architect's design, with alternates, is not within the Construction Cost Limitation, Architect will, as part of Basic Services, revise the design to bring it within the Construction Cost Limitation to Owner's satisfaction.
- 6.2 ADDITIONAL SERVICES. As compensation for any Additional Services not listed in Section 6.1 and rendered in compliance with the provisions of ARTICLE 3, Architect shall receive a fee (a) equal to the DSE (i) for Additional Services performed by Architect or (ii) multiplied by a factor of 1.1 (110%) for Additional Services performed by a Consultant or other third party retained by Architect pursuant to ARTICLE 3, or (b) agreed to by the parties prior to Architect's performance of such Additional Services.
- 6.2.1 At Owner's request, Architect shall deliver to Owner a proposal in a form acceptable to Owner for performance of any proposed Additional Services on a fixed-price basis.
- 6.3 REIMBURSABLE EXPENSES. Subject to the Reimbursable Expenses Cap, Architect shall be reimbursed for the actual and commercially reasonable out-of-pocket invoiced expenditures for any of the expenses listed in Section 6.3.1 through 6.3.8 (the "*Reimbursable Expenses*") made by Architect, its employees, or its Consultants in the interest of the Project, excluding any applicable taxes. In order to receive reimbursement for Reimbursable Expenses, Architect must submit to Owner's Designated Representative a request for payment together with original invoices; provided, however, expenses incurred by Architect for renderings, mockups or models (see Section 6.3.2), approval fees (see Section 6.3.3), LEED registration (see Section 6.3.4) and/or travel (see Sections 6.3.7 and 6.3.8) are not Reimbursable Expenses unless Architect has obtained Owner's written approval *prior to incurring* such expense(s).
- 6.3.1 Commercially reasonable out-of-pocket expense of reproductions (other than those required as Basic Services, billed as Additional Services, provided by Owner, or for Architect's and its Consultants' office use); 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 Architect as to the project name, number and institution.
- 6.3.2 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.
- 6.3.3 Fees paid for securing approval of Appropriate Authorities.
- 6.3.4 Registration and documentation of and for LEED certification in accordance with Section 3.2.16 above, including fees paid to Appropriate Authorities.
- 6.3.5 Professional models and renderings produced for presentations when requested in writing by Owner.
- 6.3.6 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 Architect and Owner; Architect's in-house work or correspondence; or work or correspondence exchanged between Architect and any Consultants.
- 6.3.7 Expense of any additional insurance coverage or limits that exceed those required by this Agreement, when requested by Owner.

- 6.3.8 Transportation and living expenses when traveling in connection with the Project, at Owner's prior written request and approval, excluding travel or living expenses within the Houston Metropolitan area. Transportation expenses must satisfy the following requirements:
- 6.3.8.1 Travel from Texas to out of state locations:
 - 6.3.8.1.1 Maximum rates for lodging and meals shall be in accordance with the "Out of State Meals and Lodging Rates," plus city and state taxes, published by the Texas Comptroller of Public Accounts.
 - 6.3.8.1.2 Notwithstanding the limitation on lodging rates above, if the expenses actually incurred by Architect for lodging exceed the State rate, Architect may be reimbursed for the additional amount incurred up to a maximum of forty percent (40%) of the State rate.
 - 6.3.8.1.3 The meal per diem will only be paid on trips involving overnight travel.
 - 6.3.8.2 Travel to Texas from out of state locations:
 - 6.3.8.2.1 Lodging: maximum reimbursement for lodging in Texas shall be limited to current State of Texas per diem rate plus city and state taxes.
 - 6.3.8.2.2 Notwithstanding the limitation on lodging rates above, if the expenses actually incurred by the Architect for lodging exceed the State rate, the Service Provider may be reimbursed for the additional amount incurred up to a maximum of forty percent (40%) of the State rate.
 - 6.3.8.2.3 Meals; reimbursement limited to current State of Texas per diem rate. The meal per diem will only be paid on trips involving overnight travel.
 - 6.3.8.3 Automobile Expenses: auto rental for compact size category, related auto insurance, gasoline, parking and taxi service. Costs include applicable taxes.
 - 6.3.8.4 Airline Travel: coach class air travel with rates nearest to the State contract rate. All airline travel shall be booked no less than 7 days in advance when possible. Reimbursement for air travel booked within 7 days of departure, without the prior approval of Owner's Designated Representative, may be limited. A sales receipt and a boarding pass must be provided for each flight in order to qualify for reimbursement.
- 6.3.9 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.

ARTICLE 7 – PAYMENTS

7.1 **BASIC SERVICES.** Payments for Basic Services shall be made monthly in proportion to services performed to increase the compensation for Basic Services to the following percentages of the Basic Fee at the completion of each phase of the Work:

Schematic Design Phase	15%
Design Development Phase	35%
Construction Documents Phase	75%
Bidding or Negotiation Phase	80%

Construction Administration Phase	95%
Final Completion of Construction and Owner's Receipt of Record Drawings and Final Lien Waiver	100%

Notwithstanding the foregoing, payments in accordance with this Section 7.1 shall not exceed ninety percent (90%) of the Service performed until Owner has approved and accepted the Services for that phase, which approval shall not be unreasonably withheld.

7.1.1 Architect shall submit to Owner monthly Architect's invoice in the form specified by Owner from time to time, itemizing the Services performed and billed for the current payment period including payments to Consultants, which items must be supported with (1) a copy of each Consultant's invoice, (2) each Consultant's contingent lien waiver for the Service(s) billed, (3) each Consultant's final lien waiver for all Services rendered prior to the then-current invoice, and (4) Architect's contingent lien waiver for the Services billed. Each invoice (except the first) will be delivered to Owner with Architect's certification that Architect paid within five (5) days of receipt of Owner's payment all Consultants and other third parties whose invoices were itemized on the immediately preceding Architect's invoice.

7.1.2 Final payment for Services shall not be due and payable unless and until Architect has delivered to Owner (1) the Record Drawings, (2) Architect's and each Consultant's final lien waiver for all Services rendered (the "**Final Lien Waiver**"), and (3) Architect's Statement of Services containing the following certification: "*Architect certifies that all persons, consultants and firms who supplied services to it in connection with this Project have been fully paid for their Services, or that they will be fully paid immediately upon receipt of this payment, and that there are no other outstanding debts, obligations or claims related to this Project for which Owner may be liable or for which Architect will look to Owner for additional payment. This payment constitutes full and final payment to Architect and its consultants for all Services provided for this Project and Owner is not obligated to make any more payments under its agreement with Architect.*"

7.2 ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES. Payments for Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of Architect's invoice and original back-up documentation as required pursuant to ARTICLE 6.

7.3 GENERAL.

7.3.1 No partial payment made shall be, or construed to be, final acceptance or approval of the Services to which the partial payment relates, or a release of Architect or any of Architect's obligations or liabilities with respect to such Services.

7.3.2 Under no circumstances shall Owner be obligated to make any payment (whether a progress payment or final payment) to Architect during the existence of any one or more of the following conditions:

7.3.2.1 Architect is in breach of or default under this Agreement or any other agreement between Architect and Owner or any of Owner's component universities;

7.3.2.2 Any portion of a payment is for Services that were not performed in accordance with this Agreement; provided, however, payment shall be made for those Services which were performed in accordance with this Agreement;

7.3.2.3 Architect has failed to make payments promptly to Consultants or other third parties for or in connection with Services for which Owner has made payment to Architect;

7.3.2.4 If Owner, in its good faith judgment, determines that the balance of the unpaid balance of the sum for Basic Services (set forth in Section 6.1) is not sufficient to complete the Basic Services in accordance with this Agreement; or

- 7.3.2.5 Architect has failed to achieve a level of performance necessary to maintain the Schedule.
- 7.3.3 Any fee, penalty, interest or damages suffered or incurred by Owner due to Architect's failure or refusal to pay any Consultant or other third party shall be offset against payment(s) due Architect.
- 7.3.4 If the Project is suspended or abandoned in whole or in part, Architect shall be paid for Services performed and for Reimbursable Expenses due prior to Architect's receipt of Owner's written notice of such suspension or abandonment.
- 7.3.5 The acceptance by Architect of final payment under this Agreement shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever of Architect against Owner under the provisions of this Agreement except those claims previously made in writing and identified by Architect as unsettled at the time of the final request for payment.
- 7.3.6 For purposes of *Texas Government Code* §2251.021, the date the performance of a Service is completed is the date that Owner's representative approves the invoice.

ARTICLE 8 – RECORD RETENTION; OWNER AUDIT RIGHTS

8.1 **RECORDS.** Architect shall keep full and detailed records and accounts of all information related to this Agreement and the Services 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 (collectively, "**Audit Records**") establishing the actual cost of the Services whether or not Owner and Architect have agreed to a fixed price and/or lump sum for Basic Services, including but not limited to: Architect's accounting records, time sheets, Direct Salary Expense, insurance rates and the support therefor, insurance contracts, insurance policies, invoices, bills, Reimbursable Expenses reports, Additional Services reports, records, books, correspondence, instructions, Record Drawings, receipts, Consultant contracts, memoranda, written policies and procedures, original estimates, estimating work sheets correspondence, any other supporting evidence necessary to substantiate charges related to this Agreement and other records, drawings or data relating to the Services performed in accordance with this Agreement. Architect shall preserve Audit Records for a period of four (4) years after final payment, termination of this Agreement, or abandonment of the Project, or for such longer period as may be required by law or directed in writing by Owner.

8.1.1 Architect shall provide Owner with an executed copy of its contract with each Consultant, including any retained by Architect as Additional Services. Architect shall require all Consultants to permit Owner to audit their books and records relating to the Project for the purpose of determining compliance with the provisions of this Agreement regarding qualifications, invoicing and conformance with the Construction Documents. A provision in a contract between Architect and a Consultant attempting to undermine or override this provision shall constitute a default by Architect under this Agreement.

8.2 **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, Architect'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 Architect's staff as reasonably required.

8.2.2 In the event Architect does not fully comply with the requirements of this ARTICLE 8, Architect 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 ARTICLE 8.

8.2.3 If any audit discloses overcharges by Architect 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 Architect 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 Architect. Owner may deduct such reimbursement amounts from any money due or that becomes due Architect.

ARTICLE 9 – TERMINATION OF AGREEMENT

9.1 TERMINATION. Owner reserves and has the right and privilege of canceling, suspending, or abandoning this Agreement or the execution of all or any Service in connection with this Agreement at any time upon seven (7) days' written notice to Architect ("**Owner Termination**"). Architect may terminate this Agreement upon seven (7) days' written notice to Owner's Designated Representative, should Owner materially breach any of its obligations under ARTICLE 5 if Owner has failed to cure such material breach within fifteen (15) days following Architect's written notice to Owner of such material breach.

9.2 TERMINATION PAYMENT. In the event of Owner Termination for any reason other than Architect's default under this Agreement or termination by Architect, Owner shall pay the Termination Payment to Architect and thereafter Owner shall have no further obligation to Architect. "**Termination Payment**" means full payment for all Services performed as required by this Agreement and for all Reimbursable Expenses incurred by Architect prior to the date of Owner's notice of termination, less any and all damages, foreseen or unforeseen, that are sustained by Owner as a result of any default or consequence of termination. In ascertaining what Services are payable as part of the Termination Payment, consideration shall be given to both completed Services and Services in progress, to complete and incomplete drawings, and to other documents, whether delivered to Owner or in the possession of Architect.

9.2.1 Notwithstanding anything to the contrary contained in this ARTICLE 9 or elsewhere in this Agreement, Architect shall not be entitled to receive the Termination Payment unless and until Architect has delivered to Owner all drawings, specifications, statements, accounts, reports and other materials prepared or received by Architect in connection with the Services and/or the Project. Architect acknowledges, as a material inducement to Owner to enter into this Agreement, that Owner may use the ideas and designs contained in such drawings, specifications, statements, accounts, reports and other materials for the completion of the Services and/or the Project, or otherwise; provided, however, Owner shall (a) credit Architect's authorship to the extent required by law, and (b) release Architect from liability due to incompleteness of design.

9.3 NO RELEASE. Termination of this Agreement shall not relieve Architect of liability for violations of this Agreement or for any act or omission, or negligence, or other misconduct of Architect or any of its employees, subcontractors, or Consultants. In the event of a termination, Architect hereby consents to employment by Owner of a substitute architect to complete the Services, with the substitute architect having all rights and privileges of Architect.

ARTICLE 10 – DOCUMENTS

10.1 FORMAT. Architect shall prepare all Project CADD files in accordance with the requirements of Owner's CADD Standards Manual, which is located online at <http://www.uh.edu/plantops/departments/fpc/owners-design-criteria/index.php>. The CADD Standards Manual can also be accessed at www.uh.edu/plantops. All documents, including Project CADD files, shall be created based on Models and the information contained and disclosed therein.

10.2 CLARIFICATION AND DISTRIBUTION OF DRAWINGS. Architect shall utilize project information management software, such as Newforma Project Center, throughout the course of the Project for purposes of file sharing and document management. All Project documentation, such as Models, notifications and responses for requests for information and submittals, Project Architect's supplemental instructions, proposal requests, revised logs and other standard documentation must be uploaded and distributed via the information management software. The software must include an e-mail notification system and have capacity to store all posted files for a minimum of thirty (30) days. A user ID and password will be provided for all Project Team members to disseminate project reports and information. A mutually acceptable file naming convention will be established by the Project Team prior to the commencement of the Work.

10.2.1 All proposed changes to drawings, plans and specifications, regardless of how initiated, must be fully described in the document depicting them as to scope of work added, removed or changed and accompanied by the Model(s). Upon Owner's approval of a proposed change, the original copies of the Construction Documents shall be revised to show such change, provided that all such revisions shall be separately recorded on media acceptable to Owner, including, without limitation, CADD. Such revisions must be clearly indicated and a current revision date must be included on the reproducible copy. Changes to the specifications must be made by consecutively numbered and dated revisions. All changes to design documents or specifications will be identified by date of change, revision number and other customary identification references. Areas changed on drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.

10.3 DELIVERY OF REVIEW SETS. Architect shall provide to Owner one (1) digital and one (1) hard copy of document review sets at each required stage of completion as follows (each, a "Review Period"):

90% - Schematic Design

50% & 90% - Design Development

50% & 90% - Construction Documents

10.4 REVIEW OF DRAWINGS.

10.4.1 Architect shall participate in a review session with Owner's Designated Representatives at the end of each Review Period. Owner will provide its review comments to Architect on the form used by Owner for internal document review, and Architect shall provide a detailed written response to each of Owner's review comments and shall incorporate into the Construction Documents such corrections and amendments as Owner requests, unless Architect reasonably objects to such changes in writing and Owner agrees to the objections.

10.4.2 Owner's approval of revised documents submitted by Architect pursuant to Section 10.4.1 shall not constitute or be deemed an approval of any unlisted changes, and any costs or expense for any Additional Services subsequently required and/or rendered for such unlisted changes shall be Architect's sole responsibility.

10.4.3 Architect shall identify to Owner in writing anything in Architect's drawings and specifications and any other drawings, plans, sketches, instructions, information, requirements, procedures, requests for action and other data supplied to Architect (by Owner or any other party) that Architect regards as unsuitable, improper or inaccurate in connection with the purposes for which such documents or data are furnished. Architect shall be solely responsible for the use of such documents or data unless Architect advises

Owner in writing that in its opinion such documents or data are unsuitable, improper, or inaccurate and Owner instructs Architect in writing to proceed in accordance with the documents or data as originally provided.

10.5 RECORD DRAWINGS. Architect shall provide Record Drawings (one (1) electronic file in accordance with Owner's CAD Standards Manual and in the media prescribed by Owner; and two (2) sets large format prints) and record specifications (two bound volumes) within ninety (90) days of Substantial Completion. Record Drawings shall be based on the as-built drawings prepared by Contractor during the course of construction and must include all changes made to the drawings and specifications by addenda, Architect's supplemental instructions, field orders, field reports, requests for information, shop drawings, Change Orders, field conditions and all other directives and information resulting in a change to the initial design. All revisions or changes noted on the as-built drawings shall be properly annotated and cross referenced on the Record Drawings. Each sheet shall be prominently noted "Record Drawing" and shall bear Architect's notations reflecting the information contained in the as-built drawings has been checked.

10.6 USE OF DOCUMENTS. All drawings, specifications and other documents and electronic data furnished by Architect to Owner under this Agreement and specifically including the Electronic Files used to create any such data ("**Work Product**") are deemed to be instruments of service and Architect shall retain ownership to such documents, subject to the following provisions of this Section 10.6

10.6.1 *License*. Owner shall be permitted at all phases of the Project to retain copies of all Work Product, including Electronic Files (such as Models), reproducible copies and CADD copies, of the drawings, specifications and other documents for information and reference in connection with Owner's use and occupancy of the Project. Architect hereby grants Owner an irrevocable, fully paid-up, perpetual license and right to use (but not sell or further license) the drawings, specifications and other documents furnished, including the originals thereof, and the ideas and designs contained therein. This license will survive the termination or expiration of this Agreement. If this Agreement expires, is terminated or limited in scope, Architect and Project Architect hereby expressly consent to the employment by Owner of a substitute architect to complete the Pre-Construction Phase Services under this Agreement, with the substitute architect having all of the rights and privileges of the original Project Architect.

10.6.2 *Ownership*. Upon Owner's Final Payment, the Work Product (including the Electronic Files used to create any such Work Product) shall become the property of Owner to the extent allowed by applicable law. Owner may utilize all or any portion of the Work Product for the repair, maintenance, modification, expansion or renovation of the Project, and for any other purpose as permitted by law to the owner of such material. Owner understands that all such drawings, specifications, models, renderings, work product, instruments of service and other documents may be inappropriate for use in the construction of any other project. Architect shall not be responsible for the use or workability of such drawings, specifications, models, renderings, work product, instruments of services and other documents in connection with any project other than the project for which they were specifically designed.

10.6.3 *Required Disclosures*. Submission or distribution of any or all of the Construction Documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of Architect's rights.

10.6.4 *Inspection by Others*. In the event a federal grant or other federal financing participates in the funding of this Project, Architect shall permit access to and grant the right to examine its books covering its Services, comply with all federal agency requirements as to work hours, overtime compensation, nondiscrimination, contingent fees, etc., and attend meetings, prepare reports and submit data for approval, as required by the agency involved.

10.7 REPLACEMENT. If any of the plans, specifications and other design and Construction Documents or other work materials produced or used by Architect pursuant to this Agreement are damaged or destroyed by fire or other casualty, Architect shall prepare and provide Owner with new copies of any such documents or materials, at no additional cost to Owner.

ARTICLE 11 – INDEMNIFICATIONS

11.1 GENERAL. TO THE FULLEST EXTENT PERMITTED BY LAW, AND AS CONSIDERATION FOR THE TERMS AND CONDITIONS OF THIS AGREEMENT, ARCHITECT AGREES TO RELEASE, INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS THE UNIVERSITY OF HOUSTON SYSTEM AND/OR ANY OF 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 IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER (“DAMAGE”) COMMITTED BY THE ARCHITECT, IT’S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL.

11.1.1 Architect’s indemnity obligations in the preceding paragraph do not apply to a Claim resulting from Owner’s negligence when such negligence causes the damage which is the basis of the Claim. In the event Architect 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.

11.2 INTELLECTUAL PROPERTY. ARCHITECT AGREES TO RELEASE, INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, OR COPYRIGHT, ARISING BY OR OUT OF ANY OF THE SERVICES OR THE USE BY ARCHITECT OR BY OWNER AT THE DIRECTION OF ARCHITECT, OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY ARCHITECT AND ARCHITECT SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. ARCHITECT DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER’S OR OWNER’S CONSULTANT’S 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 ARCHITECT AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

11.3 SURVIVAL. The indemnities contained herein shall survive the completion of the Services and the expiration or termination of this Agreement.

ARTICLE 12 – ARCHITECT’S REPRESENTATIONS AND COVENANTS

12.1 COMPLIANCE WITH LAW. Architect represents and covenants compliance with all Applicable Laws as they are interpreted by the Appropriate Authorities throughout the term of this Agreement. Architect will be solely responsible for all costs, fees, penalties, awards and/or damages, and any interest thereon, resulting from Architect’s default under the immediately preceding sentence, together with the costs and fees incurred to secure compliance.

12.1.1 Architect represents it is familiar with the Texas Standard for energy conservation design, and by this representation warrants compliance (and covenants to comply) with the requirements of *Texas Government Code* Section 447.004.

12.2 ADEQUACY OF SERVICE. Architect represents and covenants to allocate adequate time, personnel and resources as necessary to perform the Services. All staff assigned by Architect to perform all or any part of the Services shall be qualified by training and experience to perform their assigned tasks.

12.3 NO IMPEDIMENTS. Architect represents and covenants that there are no obligations, commitments, or impediments of any kind known to Architect that will limit or prevent performance of the Services by Architect.

12.4 ACCURACY. Architect represents and covenants that the Services shall be reasonably accurate and free from any material errors or omissions. Neither acceptance nor approval of a Service by Owner shall relieve Architect of any of its professional duties or release it from any liability, it being understood that Owner is, at all times, relying upon Architect for its skill and knowledge in performing the Services. Owner shall have the right to reject any Service because of any fault or defect in the Project due to any material errors or omissions in the Construction Documents. Upon notice of any such errors or omissions, Architect shall promptly provide any and all services necessary to correct or remedy them at no cost to Owner, even if such correction requires corrective construction work, which work will be paid by Architect. Architect's obligation to correct its errors and omissions is in addition to, and not in substitution for, any other remedy for defective services which Owner may have at law or in equity, or both.

12.5 WITHIN BUDGET. Architect represents and covenants that the Project, as designed by Architect, can be constructed for an amount not to exceed the Construction Cost Limitation.

12.6 SUITABLE FOR INTENDED PURPOSE. Architect represents and covenants that, upon completion of the Project in accordance with the Construction Documents, the Project will be suitable for its intended purpose.

12.7 COMPLIANCE WITH OWNER'S POLICIES. While on the premises of Owner or its component institutions (including the Site), Architect agrees and covenants to abide and to cause Consultants and other third parties retained by Architect in connection with the Project to abide by the policies and procedures relative to conduct, action and demeanor applicable to such premises.

12.8 GOOD STANDING; NO TAX DELINQUENCY. Architect covenants 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. Architect agrees that any false statement with respect to franchise tax status shall be a material breach hereof, and Owner shall be entitled to terminate this Agreement upon written notice thereof to Architect.

ARTICLE 13 – INSURANCE

13.1 REQUIRED COVERAGES. Prior to commencing performance of its obligations under this Agreement, Architect shall carry and maintain in force until Final Acceptance (as defined in the UGC) at Architect's sole cost and expense, professional liability and errors and omissions insurance with minimum policy limits of Five Million Dollars (\$5,000,000) per claim and in the aggregate covering the Services, as well as the following kinds of insurance in the following amounts:

13.1.1 Worker's Compensation: statutory limit – State of Texas

13.1.2 Employers Liability: at least \$1,000,000 per occurrence

13.1.3 Commercial General Liability: \$1,000,000 per occurrence, \$2,000,000 in the aggregate, including:

13.1.3.1 Comprehensive Form

13.1.3.2 Premises/Operations

13.1.3.3 Products/Completed Operations (two (2) years)

13.1.3.4 Coverage shall not contain any endorsement(s) excluding nor limiting Products/Completed Operations, Contractual Liability or Cross Liability.

13.1.3.5 Broad Form and Third Party Property Damage

13.1.3.6 Personal Injury

13.1.3.7 Fire Damage: \$500,000 per occurrence

13.1.3.8 Medical Expense: \$20,000 per occurrence

13.1.4 Commercial Auto Liability: \$1,000,000 combined single limit

13.2 CONSULTANTS' COVERAGES. Architect shall also require that the following Consultants maintain professional liability insurance in the amounts set forth below and in satisfying the requirements of Architect's insurance under Section 13.3.

13.2.1 The Structural Consultant: \$5,000,000 per occurrence.

13.2.2 The Mechanical / Electrical / Plumbing Consultant: \$5,000,000 per occurrence.

13.2.3 The Civil Engineering Consultant: \$5,000,000 per occurrence.

13.2.4 Other Consultants: an amount acceptable to Owner.

13.3 POLICY REQUIREMENTS. All insurance coverage required by this ARTICLE 13 shall be primary and non-contributory and written by companies authorized and admitted to do business in the State of Texas and rated A-, VII or better by A.M. Best Company, and shall not be terminable or materially alterable without thirty (30) days' prior written notice by its issuer to Owner. Architect shall provide Owner with legally sufficient evidence of all coverage required under this Agreement. Owner shall, with the exception of Architect's Workers Compensation and Employers Liability and Professional Liability policies, be named as an Additional Insured under each of the above policies, and Architect and its insurer agree to provide a complete waiver of subrogation for all policies against Owner. No policy may have a deductible (or retention) more than \$100,000. When a retention or deductible exceeds \$25,000, the Owner, reserves the right, but not the obligation, to review and request a copy of Architect's most recent annual report or audited financial statement. These representations shall be documented in the Certificates of Insurance provided to Owner.

ARTICLE 14 – MISCELLANEOUS

14.1 LIMITATION OF LIABILITY. Except for the obligation of Owner to pay Architect in accordance with ARTICLE 7 above, Owner shall have no liability to Architect or to anyone claiming through or under Architect 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 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 Owner as such bank's prime or base rate. Notwithstanding any obligation or liability of Owner to Architect, 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 Architect or to anyone claiming through or under Architect by reason of the execution or performance of this Agreement.

14.2 NO WAIVER.

14.2.1 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.

14.2.2 Owner is not an architect. No acceptance or approval of documents submitted or services rendered by Architect shall be deemed to release Architect from its obligations to Owner and responsibilities under Applicable Law, or to waive Owner's remedies for Architect's breach, failure or violation of such obligations and responsibilities.

14.3 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.

14.4 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.

14.5 NEW LAWS. Owner and Architect 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.

14.6 ENTIRE AGREEMENT; NO THIRD PARTY BENEFICIARIES. This Agreement represents the entire and integrated Agreement between Owner and Architect 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 Architect that this Agreement is intended for the benefit of Owner and Architect 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 Architect.

14.7 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.

14.8 STATUTORY CERTIFICATIONS. By signing this Agreement, the undersigned certifies as follows:

14.8.1 “Under Section 231.006, *Texas Family Code*, Architect 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.”

14.8.2 “Under Section 2155.004, *Texas Government Code*, Architect 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.”

14.9 DISPUTE RESOLUTION. Disputes arising from this Agreement will be handled pursuant to Article 15 of the UGC.

14.10 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.

14.11 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

University of Houston System
4211 Elgin Room
Houston, Texas 77204

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

If to Architect:

with a copy to:

14.12 SUCCESSORS AND ASSIGNS.

14.12.1 Architect 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. Architect shall not assign, sublet or transfer its interests in this Agreement without the prior written consent of Owner.

14.12.2 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 Architect, so long as (a) the rights and obligations of Owner under this Agreement are assigned in connection therewith, and (b) all payments due Architect under this Agreement have been paid current.

14.13 DEATH OR INCAPACITY. If Architect 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.

14.14 SECTION 179D ALLOCATIONS.

Owner may decide to seek the allocation of certain tax benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended, (the "Code") through this Agreement with Architect

If the Owner and the Internal Revenue Service (IRS) determine that the Architect is eligible to receive the 179D deduction allocation as a "Designer" for the purposes of Section 179D of the Code or that Architect could otherwise profit financially from the monetization of the benefit (collectively the "Rebate"), Architect hereby agrees to allocate to the Owner a portion of the Rebate in an amount to be determined and contracted for on mutually agreeable terms when the value of the Rebate becomes ascertainable, net of associated costs realized by the Owner and Architect. At its sole discretion, the Owner shall determine whether to receive its portion of the Rebate in cash, discounted Architect fees or both.

Owner reserves the right to retain a third party consultant (the "Consultant") to manage and administer the process of obtaining and monetizing the Rebate derived from the Project(s).

Architect agrees to cooperate in all reasonable respects with the Consultant's efforts to obtain and monetize any such Rebates derived from the Project(s) on behalf of the Owner. Certification of eligibility and negotiation of the Rebates should be facilitated by the Owner's 179D Consultant.

14.15 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 Article and Section number), explains how the provision is modified or amended or states that the provision is deleted, and is signed by Owner and Architect. Subject to the foregoing qualification, the following exhibits are hereby incorporated by reference for all purposes as if fully set forth herein:

- EXHIBIT A Direct Salary Expense; Project Principal and Project Manager
- EXHIBIT B Architect's Initial Schedule
- EXHIBIT C Owner's Preliminary Project Schedule

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

ARCHITECT:

_____ Federal Tax ID Number: _____

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

[signatures continue on following page]

University of Houston System

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

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

EXHIBIT A

DIRECT SALARY EXPENSE; PROJECT PRINCIPAL and PROJECT MANAGER

Principals	\$ _____
Senior Vice Presidents	\$ _____
Project Directors	\$ _____
Senior Project Managers	\$ _____
Senior Architects / Planners / Programmers	\$ _____
Construction Administrators	\$ _____
Architects / Planners / Programmers	\$ _____
Project Managers	\$ _____
Senior architectural Designers	\$ _____
Architectural Designers	\$ _____
Intern Architects	\$ _____
Administration	\$ _____

The Principal for the Project is _____. The Principal's contact information is:

Office (voice): _____
Cellular: _____
Office fax: _____
email: _____

The Project Manager for the Project is _____. The Project Manager's contact information is:

Office (voice): _____
Cellular: _____
Office fax: _____
email: _____

EXHIBIT B
ARCHITECT'S INITIAL SCHEDULE
(see attached)

EXHIBIT C

OWNER'S PRELIMINARY PROJECT SCHEDULE

(see attached)