

Contract Number: _____
Project Number: _____

OWNER-CONTRACTOR AGREEMENT
BETWEEN
UNIVERSITY OF HOUSTON SYSTEM
AND
CONTRACTOR

This **OWNER-CONTRACTOR AGREEMENT** ("*Agreement*") is entered into and effective as of the date of last signature set forth below ("*Effective Date*"), by and between the **UNIVERSITY OF HOUSTON SYSTEM** ("*Owner*"), an institution of higher education and agency of the State of Texas pursuant to Chapter 111 of the Texas Education Code, and [_____] ("*Contractor*"), a [_____] authorized to do business in the State of Texas for the [_____] (the "*Project*") located at the [_____] on the [_____]. Owner and Contractor are sometimes referred to as individually as "*Party*" or collectively as the "*Parties*".

Owner and Contractor agree as follows:

ARTICLE 1 – PARTIES

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

Owner

University of Houston System
Attn: Executive Director,
[_____] _____
4211 Elgin Street
Houston, Texas 77204

Contractor

[_____] _____
Attn: [_____] _____
[_____] _____
[_____] _____, [_____] [_____] _____

With a copy to

University of Houston System
Office of the General Counsel
4302 University Drive, Suite 317
Houston, Texas 77204

With a copy to

[_____] _____
Attn: [_____] _____
[_____] _____
[_____] _____, [_____] [_____] _____

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

TABLE OF CONTENTS

ARTICLE 1 – PARTIES 1

1.1 Addresses 1

1.2 Table of Contents 1

1.3 Parts Incorporated 4

ARTICLE 2 – CONTRACT DOCUMENTS 4

ARTICLE 3 – DEFINITIONS; INTERPRETIVE 4

3.1 Definitions 4

3.2 Interpretive 6

ARTICLE 4 – SCOPE OF WORK 6

ARTICLE 5 – TIME..... 6

5.1 Contract Time 6

5.2 Liquidated Damages 7

5.3 Scheduling 7

5.4. Pre-Existing Conditions 7

ARTICLE 6 – CONTRACTOR’S GENERAL OBLIGATIONS 7

6.1 Overview 7

6.2 Contractor’s Designated Representative 7

6.3 Records; Tracking 8

6.4 Scheduling 8

6.5 Safety; Condition of Project Site and Ancillary Areas 8

6.6 Non-Conforming Work 8

ARTICLE 7 – CONTRACTOR’S CONSTRUCTION PHASE OBLIGATIONS 8

7.1 General 8

7.2 Project Control 9

7.3 Subcontractors 9

7.4 Personnel 9

7.5 Meetings 9

7.6 Cost Control 10

7.7 Changes 10

7.7 Documents, Shop Drawings, and Submissions 10

ARTICLE 8 – CONTRACT SUM; PAYMENTS 11

8.1 Contract Sum 11

8.2 Contractor’s Payment Obligations 11

8.3 Schedule of Values 11

8.4 Applications for Payment 11

8.5 Offsets; Deductions; Withholding 12

8.6 Retainage 13

8.7 Final Payment 13

8.8 No Waiver Audit 13

ARTICLE 9 – OWNER’S RESPONSIBILITIES 13

ARTICLE 10 – OWNERSHIP AND USE OF DOCUMENTS..... 14

ARTICLE 11 – RECORD RETENTION; OWNER’S AUDIT RIGHTS 14

11.1 Audit Records 14

11.2 Inspections; Audits..... 15

ARTICLE 12 – INDEMNITY..... 15

12.1 BODILY INJURY AND PROPERTY DAMAGE..... 15

12.2 INTELLECTUAL PROPERTY..... 16

12.3 Survival..... 16

Article 13 – Warranties 16

13.1 Warranties 16

13.2 Certification of No Asbestos Containing Materials or Work 17

13.3 No Waiver..... 18

Article 14 – Bonds and Insurance..... 18

14.1 Payment and Performance Bonds 18

14.2 Coverage Requirements 18

14.3 For All Insurance Required of Contractor 18

14.4 For All Insurance Required of Owner 19

Article 15 – Suspension and Termination and 21

Article 16 – State Contracting Requirements..... 21

16.1 Texas Public Information Act..... 21

16.2 Payment of Debt or Delinquency to the State..... 22

16.3 Ethics Matters 22

16.4 Disclosure of Interested Parties 22

16.5 Registration of Sex Offenders..... 22

16.6 Certifications..... 22

Article 17 – Miscellaneous..... 23

17.1 Limitation of Liability..... 23

17.2 Assignment 23

17.3 Dispute Resolution..... 23

17.4 Captions 23

17.5 Governing Law and Venue 23

17.6 Waivers 24

17.7 Amendments 24

17.8 Binding..... 24

17.9 Appointment 24

17.10 Severability 24

17.11 New Laws 24

17.12 Notices 24

Exhibits	
A	List of Drawings, Specifications, and Addenda
B	Milestone Schedule
C	Special Conditions

1.3 Parts Incorporated. The above-described articles and exhibits are attached and incorporated into this Agreement.

ARTICLE 2 – CONTRACT DOCUMENTS

2.1 The Contract Documents consist of:

2.1.1 This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;

2.1.2 The Texas Facilities Commission 2015 version of the Uniform General Conditions (“*UGC*”) and the 2018 Supplemental General Conditions (“*SGC*”) published by the Texas Facilities Commission and available on its website;

2.1.3 The University of Houston System’s Supplemental General and Special Conditions (the “*Special Conditions*”) which may be found online at: <https://uhsystem.edu/legal-affairs/general-counsel/construction/construction-contracts-and-forms/index.php>;

2.1.4 All Addenda issued before the Effective Date of this Agreement;

2.1.5 All Alternates accepted by the Owner before the Effective Date of this Agreement;

2.1.6 All Change Orders issued after the Effective Date of this Agreement;

2.1.7 The Drawings, Specifications, details and other documents developed by Project Architect to describe the Project and accepted by Owner; and

2.1.8 The HUB Subcontracting plan submitted by Contractor in response to the [invitation to bid/ request for proposals] issued by Owner for this Project.

2.2 The Contract Documents form the entire and integrated Agreement between Owner and Contractor supersede all prior negotiations, representations or agreements, written or oral.

2.3 To the extent the terms of this Agreement conflict with the UGCs and/or the SGCs, the terms of this Agreement will control. To the extent of any conflict between Contractor’s Proposal and any other Contract Document, the Contract Documents shall govern.

2.4 If there is an irreconcilable difference between or among the various documents that make up the Contract Documents, the interpretation that provides for a higher quality of material and/or workmanship will prevail over all other interpretations.

ARTICLE 3 – DEFINITIONS; INTERPRETIVE

3.1 Definitions. The following, terms, words, and phrases used in the Contract Documents shall have the following meanings, and if more specific than the definition given in the UGCs or the SGCs, the more specific definition given in this Agreement shall control:

3.1.1 **Applicable Law:** all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction.

- 3.1.2 **Construction Documents:** drawings, specifications and other documents prepared by Project Architect, its consultants, or other consultants retained by Owner for the Project that describe the Work to be executed by Contractor.
- 3.1.3 **Construction Phase:** the implementation and execution of the construction work required by the Contract Documents. The Construction Phase may be divided into different stages each with different dates for implementation and completion (each a “**Stage**”).
- 3.1.4 **Construction Phase Services:** the coordination, implementation and execution of the Work required by this Agreement and as further defined in ARTICLE 7.
- 3.1.5 **Contractor’s Designated Representative:** as set forth in Section 6.2.
- 3.1.6 **Design Consultant:** licensed professional or firm employing such licensed professional, engaged by Owner as independent consultants for design of all or a portion of the Project improvements and to prepare the Drawings and Specifications. More than one such professional or firm may be employed by Owner. (All such professionals or firms, regardless of number, may be referred to in the singular herein.)
- 3.1.7 **Drawings and Specifications:** the drawings, specifications, details and other documents developed by Project Architect to describe the Project and accepted by Owner.
- 3.1.8 **Excusable Delay:** as defined in the UGC.
- 3.1.9 **Final Completion:** the date on which the Construction Phase Services are complete in accordance with the Contract Documents.
- 3.1.10 **HUB Subcontracting Plan:** Contractor’s plan to comply with Owner’s Policy on Utilization of Historically Underutilized Business, previously submitted in response to Owner’s Request for Proposals.
- 3.1.11 **Late Completion Day:** as defined in Section 5.2.
- 3.1.12 **Program:** Owner’s comprehensive facility program for the Project.
- 3.1.13 **Project Architect:** _____, the Design Consultant designated and retained by Owner to prepare the Construction Documents and satisfy the obligations of the Architect/Engineer under the UGC and SGC.
- 3.1.14 **Project Team:** Owner, Contractor, Project Architect, Subcontractors, any separate contractors employed by Owner, and other 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.
- 3.1.15 **Schedule:** as defined and described in Section 5.3.
- 3.1.16 **Standard Specifications:** the construction and design requirements and standards of the University of Houston System’s Facilities, Planning, and Construction (“**FPC**”), and various building and life safety codes as specified by FPC which are hereby incorporated by reference.
- 3.1.17 **Substantial Completion:** further to the definition contained in the UGC, the Parties agree

that the date for Substantial Completion shall be fixed in and by Owner's Notice to Proceed with Construction.

3.1.18 **Work:** the provision of all services, labor, materials, supplies, and equipment that are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents (as such may be modified or amended). The term "reasonably inferable" takes into consideration the understanding of the Parties hereto that not every detail will be shown in the Contract Documents. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system and needed to make a complete operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by Owner. Notwithstanding the above, Contractor shall not be responsible for design, except incidental designing/detailing as required by the Specifications for shop drawing purposes.

3.2 Interpretive.

3.2.1 Capitalized terms used but not defined in this Agreement will have the meanings given in the UGC and SGC.

3.2.2 All references in the UGC and SGC to "contractor" and "general contractor" shall be read and conclusively deemed to refer to Contractor for all purposes under this Agreement.

3.2.3 To the extent the terms of this Agreement conflict with the UGC and/or the SGC, the terms of this Agreement will control.

3.2.4 If there is an irreconcilable conflict between or among the various documents that make up the Contract Documents, the interpretation that provides for the higher quality of material and/or workmanship will prevail over all other interpretations.

ARTICLE 4 – SCOPE OF WORK

Contractor has overall responsibility for and shall furnish all materials, equipment, tools, and labor necessary and reasonably inferable to complete the Work, or any phase of the Work, in accordance with Owner's requirements and the terms of the Contract Documents, including the Drawings, Specifications, Addenda, details, and other documents prepared by Project Architect and listed on **Exhibit A**.

ARTICLE 5 – TIME

5.1 Contract Time. Owner shall issue a Notice to Proceed identifying the date for commencement of the Work. The commencement date shall be 10 or more days after the date the notice is issued. Contractor shall achieve substantial completion of the Work within ____ calendar days after the commencement date, as such completion date may be extended by approved Change Orders. Contractor shall have an additional 30 days to reach final completion. **THE TIME SET FORTH FOR COMPLETION OF THE WORK IS AN ESSENTIAL ELEMENT OF THE AGREEMENT.**

5.1.1 Reasonably foreseeable adverse weather conditions will not constitute an Excusable Delay. For purposes of this Agreement, "reasonably foreseeable adverse weather conditions" means weather conditions in keeping with the historical averages listed by the National Oceanic and Atmospheric Administration on its website, www.noaa.gov.

5.2 Liquidated Damages. For each consecutive calendar day after the expiration of the substantial

completion period set forth in Section 5.1 (each a “**Late Completion Day**”) that any incomplete Work prevents or impairs the Owner’s ability to operate and use the Project for its intended purposes, including the correction of deficiencies found during the final testing and inspection, the following amounts will be deducted from the money due or that becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of executing this Agreement of the damages that the Owner will sustain for late completion.

Late Completion Day(s)	Per Diem Amount
0-15	
16-30	
30+	

5.3 Scheduling. The Milestone Schedule contained in **Exhibit B** sets forth Owner’s expectations regarding completion of the Project and its phases or stages, as previously disclosed to Contractor in Owner’s request for proposal and accepted by Contractor by reason of its proposal. Within 10 days of receiving the Notice to Proceed, Contractor shall submit for Owner’s review and acceptance a critical path schedule, using the latest version of Microsoft Project (the license and training for which shall be at Contractor’s sole expense), in accordance with the requirements of Article 9 of the UGC (the “**Schedule**”). The Schedule must include reasonable amounts of time for review and approval of design drawings and specifications by Owner and Project Architect, and for approval of authorities having jurisdiction over the Project.

5.4 Pre-Existing Conditions. Contractor acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it has thoroughly investigated those conditions. Contractor’s investigation was instrumental in preparing its bid to perform the Work. Contractor shall not make or be entitled to any adjustment to the Contract Time or the Contract Sum arising from Project conditions that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor’s investigation.

ARTICLE 6 – CONTRACTOR’S GENERAL OBLIGATIONS

6.1 Overview. In addition to the requirements of Section 3.3 of the UGC, Contractor shall perform all services specifically allocated to it by the Contract Documents, as well as those services reasonably inferable from the Contract Documents as necessary for completion of the Work and the Project in compliance with the requirements of the Contract Documents using its best efforts, skills, judgment and abilities. Implicit in Contractor’s obligations is the provision of and payment for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, temporary facilities and other facilities and services necessary or reasonably inferable for proper execution and completion of the Project, whether temporary or permanent and whether or not incorporated or to be incorporated into the Project, and complete the Project in an expeditious and economical manner consistent with the interests of Owner and in accordance with the Schedule.

6.1.1 Contractor’s duties as set forth herein shall at no time be in any way diminished by reason of any approval by Owner nor shall Contractor be released from any liability by reason of such approval by Owner, it being understood that Owner at all times is ultimately relying upon Contractor’s skill and knowledge in performing the services required hereunder.

6.2 Contractor’s Designated Representative. Contractor shall designate Contractor’s Designated Representative to act on Contractor’s behalf with respect to the Project for all purposes, including (by way of example and not of limitation) execution of Change Orders and Applications for Payment. Contractor’s

Designated Representative shall be responsible for the day-to-day management of the Work through Final Completion. Contractor's Designated Representative will be Owner's primary contact and must be available as required for the benefit of the Project and Owner. Contractor shall not replace the Contractor's Designated Representative without Owner's prior written approval, such approval not to be unreasonably withheld.

6.3 Records; Tracking. Contractor shall establish and maintain a numbering and tracking system for all Project records, including modifications thereto, requests for information, submittals and supplementary instructions and shall provide updated records at each Owner's meeting and when requested. During the Construction Phase, Contractor shall submit to Owner detailed monthly progress reports that include a description of the Project status, a summary update of the Work by Construction Specifications Institute ("*CSI*") division, photographs, updated and current schedules and logs, and any other information necessary to convey the progress of the Work.

6.4 Scheduling. Contractor is solely responsible for completion of the Work in accordance with the Contract Documents on or before the date specified in the Schedule.

6.5 Safety; Condition of Project Site and Ancillary Areas. Further to the relevant provisions of the Contract Documents, including (by way of example and not of limitation) the UGC, the SGC, and the Special Conditions, Contractor's Safety Plan shall include recommendations and information to Owner and Project Architect regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities and equipment, materials and services for common use of the Subcontractors. Contractor shall verify that appropriate safety provisions are included in the Construction Documents. The existence of any Owner-controlled insurance programs will not operate to diminish or eliminate Contractor's responsibilities under this Agreement. Owner agrees that Owner-provided Subcontractors shall be responsible for their safety precautions and programs of their employees, agents and independent contractors.

6.6 Non-Conforming Work. Owner may reject any defective or non-conforming Work on the Project of which Owner becomes aware and Contractor shall promptly correct any such defect at Contractor's own cost without increasing the Contract Sum. Upon discovering that any portion of the Work does not conform with Owner's design concept and/or requirements, including the Design Guidelines and Standard Specifications, due to an error or omission in any Construction Document materials prepared or furnished by or on behalf of Contractor, Contractor shall promptly correct such condition at no additional cost to Owner. If Contractor refuses or fails to correct (or improperly corrects) any such condition within a reasonable time after notice, Owner may cause the condition to be corrected and offset the cost of such correction against any monies owed to Contractor; provided, however, if no monies are owed Contractor at the time the condition is discovered or at the time the condition is corrected by Owner, Contractor shall promptly reimburse Owner for all expenses incurred to correct the condition. Contractor shall warranty all corrective Work, whether performed by or through Contractor or by a third party retained by Owner in accordance with the immediately preceding sentence due to Contractor's refusal or failure to correct properly any non-conforming Work.

ARTICLE 7 – CONTRACTOR'S CONSTRUCTION PHASE OBLIGATIONS

7.1 General. During the Construction Phase, Contractor shall construct the Work in strict accordance with the Contract Documents and Construction Documents within the time required by the Schedule approved by Owner and as required by Owner's UGC and SGC. The Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed with Construction (or with a portion of the Work specified in such Notice to Proceed) issued by Owner. In implementation of the responsibilities and duties of Contractor for the Construction Phase, Contractor shall provide the following services

(collectively, the “*Construction Phase Services*”):

7.2 Project Control. Contractor shall supervise and direct the Work and shall be solely responsible for construction means, methods, techniques, sequences, and procedures for the Work. Contractor shall promptly correct any defective or non-conforming Work at Contractor’s sole expense and without cost to Owner.

7.2.1 In accordance with the UGC and SGC, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Contract Documents.

7.3 Subcontractors. Contractor shall award and enter into all Subcontracts necessary and appropriate to provide all labor and materials for the construction of the Project. Owner reserves the right to perform and to award separate contracts for portions of the Work.

7.3.1 Contractor shall monitor the Work of the Subcontractors as required and coordinate such Work with the activities and responsibilities of the Project Team with a goal to attain Substantial Completion not later than the date for Substantial Completion and at a cost not to exceed the Contract Sum.

7.3.2 Inspect the Work of Subcontractors to ensure conformance with the Contract Documents without assuming Project Architect’s responsibilities.

7.3.3 Upon Owner’s request, provide Owner with complete, unaltered copies of all Subcontracts, and all amendments thereto.

7.4 Personnel. Contractor shall:

7.4.1 Establish on-Site organization of personnel and clearly defined lines of authority. At a minimum, Contractor’s on-Site personnel shall include the professionals required in accordance with Owner’s Request for Proposals for this Project.

7.4.2 Maintain strict enforcement of State of Texas prevailing wage laws in accordance with the UGC and SGC.

7.4.3 Comply with the requirements of the HUB Subcontracting Plan. Further to Article 4 of the UGC, Contractor shall not make any changes to the HUB Subcontracting Plan without Owner’s prior written approval.

7.5 Meetings. Contractor shall:

7.5.1 Attend Project progress meetings scheduled by Owner and/or Project Architect no less often than once per month, but in any event as often as required for the proper coordination of the Project, and fully advise the Project Team at such meetings as to Project status.

7.5.2 Schedule, direct and attend regular Project Team meetings to discuss jointly such matters as procedures, progress, problems and scheduling. Prior to each meeting, Contractor shall prepare and distribute to the other Project Team members a written agenda for the meeting. At each Project Team meeting, Contractor shall distribute a memorandum setting forth the list of critical activities that require immediate action and the date(s) by when the activity must be completed, and record

and distribute the minutes of each meeting.

7.6 Cost Control. Contractor shall:

7.6.1 Maintain Audit Records as required by ARTICLE 11.

7.6.2 Prepare and administer, and provide to Owner, Subcontractors' schedule of values, Subcontractors' sworn statements and waivers of lien as required, contract and disbursement summaries, Change Order listings and Change Orders, and budget cost summary reports as required by Owner.

7.7 Changes. Contractor shall use Owner's forms for, and shall comply with the requirements of the UGC for the preparation, review and processing of Change Proposals, Change Orders, and requests for information.

7.8 Documents, Shop Drawings, and Submissions. Project Architect shall be the interpreter of the design intent of the Construction Documents, subject to the terms and conditions of the agreement between Project Architect and Owner; provided, however, Contractor shall request such interpretations from Project Architect, from time to time in order to facilitate Contractor's accomplishment of its duties under this Agreement. In the event Contractor believes the interpretation of Project Architect is not reasonably inferable from the design documents and/or not in conformance with industry standards and said interpretation increases the cost and/or extends the construction schedule, then Contractor may request dispute resolution in accordance with the UGC. In addition, Contractor shall:

7.8.1 In collaboration with the other members of the Project Team, establish and implement procedures for expediting the processing and Project Architect's approval of shop drawings and other submissions in accordance with the Project specifications.

7.8.2 Receive from the Subcontractors and review all shop drawings and other submissions for conformance with the Contract Documents. Coordinate shop drawings and other submissions with the Contract Documents and other related documents prior to transmitting them to other members of the Project Team.

7.8.3 Record the progress of the Project, submit written progress reports to the other members of the Project Team, including information on the Subcontractors' Work and the percentage of completion, and keep a daily log of Project construction activities available to the other members of the Project Team in accordance with the UGC and SGC, and deliver the daily logs to Owner no less frequently than weekly for the immediately preceding week.

7.8.4 Maintain at the Project site and make available to Owner, updated records of Subcontracts, drawings, a current set of as-built Drawings and Specifications, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (prepared by the entities conducting inspections), testing laboratory procedures (prepared by the testing laboratories), contract changes, time extensions, progress payment data, Final Acceptance procedures, and instructions from Owner.

7.8.5 Coordinate and facilitate the creation of record and as-built drawings, and the procurement of warranties and guarantees. Contractor shall maintain and deliver the documents required by, and in the form stated in, the UGC and SGC describing all changes or deviations from the Construction

Documents that occurred during construction and that reflect the actual “As Built” conditions of the completed Work.

ARTICLE 8 – CONTRACT SUM; PAYMENTS

8.1 Contract Sum. Owner shall pay Contractor for performance of its obligations under this Agreement, including the Base Proposal and Alternate Proposals (if any), the sum of \$ _____, and make payment in accordance with the provisions of this ARTICLE 8.

8.1.1 The following Alternate Proposals, fully described in the Drawings and Specifications, are included as a part of the contract sum:

8.2 Contractor’s Payment Obligations. Contractor shall promptly pay all bills for labor and material performed and furnished by others in connection with this Agreement.

8.3 Schedule of Values. A Schedule of Values subdividing the Project into its respective parts and which includes values for all items comprising the Project will serve as the basis for monthly progress payments made to Contractor throughout the Project. Each Schedule of Values submitted must maintain the originally established value for each work classification line item or Subcontractor and must contain any revisions to costs or cost estimates for each such classification or Subcontractor. The format and tracking method of the original Schedule of Values and of all updates thereto will be subject to the approval of Owner and Owner’s Designated Representative. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including Contractor’s overhead and profit) shall not exceed the unpaid balance of the Contract Sum (less Retainage on Work previously completed).

8.3.1 In determining the percentage of completion, Contractor shall use the lesser of the total percentage of the Work actually completed for each classification on the Schedule of Values, or the percentage of the Contract Sum allocable to that item which has been actually incurred and demonstrated as an allowable expense by Contractor.

8.4 Applications for Payment. All payment requests must be submitted on an approved form of Application For Payment including required attachments identifying payments to HUBs and to all Subcontractors. Failure to submit the HUB Subcontracting Plan Prime Contractor Progress Assessment Report form (www.tfc.state.tx.us/communities/facilities/prog/construct/ProgressAssessmentReport.xls) with each Application for Payment will result in Owner’s rejection of the application.

8.4.1 With each Application for Payment, Contractor shall submit all receipts, invoices with check vouchers or other evidence of payment, petty cash account information, payrolls, including certified payrolls, and any and all other evidence required in the UGC and which Owner or Owner’s Designated Representative deem necessary to support the amount requested.

8.4.2 Notwithstanding the certification of Contractor’s payment applications by the Design Consultant, Owner will independently review Contractor’s payment applications and make a determination as to the amount properly payable to Contractor. Contractor shall submit its payment applications to Owner by the last day of each month. Provided that Contractor’s payment applications are submitted by the last day of each month and approved by Owner, Owner shall pay Contractor the approved amount in accordance with Chapter 2251 of the *Texas Government Code*.

8.4.3 Payments to Subcontractors included in an Application for Payment will not exceed the percentage of Work allocable to such Subcontractors for each respective Schedule of Values classification which has been actually completed and will not exceed the total value of the

subcontract amount.

8.5 Offsets; Deductions; Withholding.

8.5.1 Owner is an agency of the State of Texas and materials and services utilized in the construction of the Project may be exempted from state and local taxes. Contractor is responsible for taking full advantage of all tax exemptions applicable to the Project. Owner will deduct from the Applications for Payment and from the request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

8.5.2 Amounts assessed as liquidated damages in accordance with Section 5.2 of this Agreement and other amounts to which Owner is entitled by way of setoff or recovery, if any, shall be deducted from any amounts due Contractor.

8.5.3 Notwithstanding any other contractual provision to the contrary, Owner may withhold any payment from Contractor to the extent reasonably required to protect Owner's interests under any of the following circumstances:

8.5.3.1 Contractor persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in breach or default under this Agreement;

8.5.3.2 Any part of such payment is attributable to services not performed in accordance with the Contract Documents; provided, however, that any part of such payment shall be made to the extent attributable to services performed in accordance with this Agreement;

8.5.3.3 Contractor's payment request has insufficient documentation (including, by way of example and not of limitation, Project Architect's certification to Owner that the Work has progressed to the point indicated in Contractor's payment request and that, to the best of Project Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents) to support the amount of payment requested for Project costs; provided, however, Owner shall pay for allowable Project costs for which there is sufficient documentation;

8.5.3.4 Contractor is in violation of the Prevailing Wage requirements or has failed to make payments promptly to consultants or other third parties used in connection with any services for which Owner has made payment to Contractor;

8.5.3.5 Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement.

8.5.3.6 Contractor persistently fails to meet schedule requirements or Owner, in its good faith judgment, determines that the remaining Work will not be completed within the Contract Time;

8.5.3.7 Contractor is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts;

8.5.3.8 Contractor fails to obtain, maintain or renew insurance coverage as required by this Agreement;

8.5.3.9 Owner's right to withhold payment is contingent on giving Contractor a minimum of seven calendar days' written notice of specific defects or defaults and opportunity to cure same, and on Contractor's failure to cure or to take diligent steps to cure within such seven calendar days.

8.6 Retainage. Retainage will be withheld by Owner from the entire amount requested.

8.7 Final Payment. Contractor's request for Final Payment must not be made until all Work is completed, all requirements of the Contract Documents have been satisfied, and Contractor delivers to Owner: (i) a complete release of all liens arising out of the Work; (ii) written consent of surety to release Final Payment; and (iii) an affidavit that, to the best of Contractor's information or knowledge, the release includes and covers all materials and services over which Contractor has control and for which a lien could be filed, subject only to the Final Payment by Owner. Alternatively, Contractor may furnish a bond satisfactory to Owner to indemnify Owner against any lien. If any lien remains unsatisfied after all payments are made, Contractor shall refund to Owner all money Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and Owner shall have all remedies at law and in equity.

8.7.1 The acceptance by Contractor or Contractor's successors of Final Payment under this Agreement, will constitute a full and complete release of Owner from any and all claims, demands and causes of action whatsoever which Contractor or Contractor's successors have or may have against Owner under the provisions of this Agreement for payment for the Work except for those previously made in writing and identified by Contractor as unsettled at the time of the final request for payment.

8.8 No Waiver.

8.8.1 Nothing contained in this Agreement will require Owner to pay Contractor an aggregate amount for the Project that exceeds the Contract Sum or to make any payment if, in Owner's belief, the cost to complete the Work would exceed the Contract Sum less previous payments to Contractor.

8.8.2 No partial payment made under this Agreement will constitute Final Acceptance or approval of that part of the services to which such partial payment relates, or a release of Contractor from any of its obligations under this Agreement and/or liabilities with respect to such services.

8.9 Audit. As set forth in greater detail in ARTICLE 11, Owner and its representatives (including but not limited to third-party auditing consultants, if any) may verify and audit the details set forth in Contractor's billings, certificates, accountings, cost data, and statements, either before or after payment, by (i) inspecting the pertinent books and records of Contractor during normal business hours; (ii) examining any reports with respect to this Project; (iii) interviewing Contractor's business employees; (iv) visiting the Project site; and (v) other reasonable action.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.1 Owner will identify the Owner's Designated Representative who is fully acquainted with the Project who will facilitate and coordinate Owner's Project issues with Contractor, and examine the documents submitted by Contractor and render decisions on behalf of Owner. Owner's Designated Representative will administer this Agreement on behalf of Owner.

9.2 Owner will cooperate timely in providing information to the other members of the Project Team

regarding its requirements for the Project.

9.3 Owner will provide the general schedule, setting forth Owner's plan for milestone dates and completion of the Project.

9.4 Owner's Designated Representative will examine the documents submitted by Contractor and may render decisions pertaining to such documents. If Owner has actual knowledge of any fault or defect in the Project or non-conformance with the Drawings and Specifications, Owner shall give prompt written notice of such fault, defect, or non-conformance to Contractor.

9.5 Owner may designate one or more construction inspectors of its own who will be given access to the Work as requested or needed. The provision of such inspectors by Owner will not reduce or lessen in any respect Contractor's responsibilities for the Work.

9.6 Owner, at Owner's cost, will secure the services of surveyors, soils engineers, air and water testing, commissioning and balancing or other special consultants to develop such additional information as may be necessary for the design and/or certification of the Project.

9.7 Owner shall arrange and pay for materials, structural, mechanical, chemical and other laboratory tests as necessary during construction; provided, however, that Contractor shall pay for any tests required by special or unique construction procedures proposed by Contractor. The Parties accordingly agree that, if the designed construction method requires a special test that is outside of the industry norm, the test will be paid for by Contractor.

9.8 Owner shall furnish or obtain all legal, accounting, auditing and insurance counseling services for itself as may be necessary for the Project.

ARTICLE 10 – OWNERSHIP AND USE OF DOCUMENTS

10.1 The Construction Documents are instruments of service and shall remain the property of their authors whether the Project for which they are made is executed or not. Contractor shall be permitted to retain one record set of the Construction Documents. All other copies of the Construction Documents shall be returned to their respective authors or suitably accounted for. Contractor and its Subcontractors are authorized to reproduce and use portions of the Construction Documents as necessary and appropriate for the execution of the Work. Contractor and its Subcontractors shall not use the Construction Documents on any other projects.

10.2 Submission or distribution of the Construction Documents to meet official regulatory requirements or for other purposes in connection with the Project shall not diminish Project Architect's or other author's rights.

ARTICLE 11 – RECORD RETENTION; OWNER AUDIT RIGHTS

11.1 Audit Records. Contractor shall keep full and detailed records and accounts of all pertinent information related to this Agreement and the Project in accordance with Generally Accepted Accounting Principles ("**GAAP**") and exercise such cost controls as may be necessary for proper financial management under this Agreement. The accounting and control systems must be satisfactory to Owner. Owner and its representatives (including but not limited to third-party auditing consultants, if any) will be afforded reasonable access, at reasonable times, to all records establishing the actual cost of the Project (collectively, "**Audit Records**"), including but not limited to: Contractor's accounting records, time sheets, payroll burden calculations, insurance rates and the support therefor, insurance contracts, insurance policies, bond

cost documentation and other bond information, invoices, bills, and expense reports, records, books, foreman's reports, superintendent daily logs, correspondence, instructions, Record Drawings, receipts, Subcontracts (including all modifications, revisions and amendments), purchase orders, vouchers, memoranda, written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating work sheets correspondence, Change Order files (including documentation), general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, any other supporting evidence necessary to substantiate charges related to this Agreement and other records, drawings or data relating to the services rendered in accordance with this Agreement. Audit Records must be kept with respect to all Work. Contractor shall preserve Audit Records for a period of four years after Final Payment or abandonment of the Project, or for such longer period as may be required by law or directed in writing by Owner.

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

11.2.1 Owner's agent or its authorized representative will have reasonable access at reasonable times to Contractor'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 from Contractor's staff as reasonably required.

11.2.2 In the event Contractor does not fully comply with the requirements of this ARTICLE 11, Contractor 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 11.

ARTICLE 12 – INDEMNITY

12.1 **BODILY INJURY AND PROPERTY DAMAGE. TO THE FULLEST EXTENT PERMITTED BY LAW, AND AS CONSIDERATION FOR THE TERMS AND CONDITIONS OF THIS AGREEMENT, CONTRACTOR AGREES TO RELEASE, INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS OWNER, THE UNIVERSITY OF HOUSTON, AND/OR ANY OF THEIR RESPECTIVE COMPONENT INSTITUTIONS, DIRECTORS, BOARD MEMBERS, REGENTS, TRUSTEES, OFFICERS, ADMINISTRATORS, AGENTS, EMPLOYEES, LICENSEES, SUCCESSORS AND ASSIGNS (“INDEMNITEES”) FROM ANY CLAIMS, DAMAGES, LOSSES, LIABILITIES, LIENS, COSTS AND/OR EXPENSES, CONTROVERSIES, CAUSES OF ACTION, LAWSUITS, PROCEEDINGS, INJURIES, JUDGMENTS AND EXPENSES (INCLUDING MEDIATION, SETTLEMENT, ATTORNEY FEES, AND OTHER COSTS OR EXPENSES) (EACH, A “CLAIM”) IF THE CLAIM: (1) IS RELATED TO BODILY INJURY, SICKNESS, DISEASE, DEATH OR LOSS OR DAMAGE TO REAL OR PERSONAL PROPERTY, INCLUDING ANY LOSS OF USE RESULTING THEREFROM (COLLECTIVELY, “DAMAGE”); AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY OF THE FOLLOWING: (A) A NEGLIGENT ACT OR OMISSION BY CONTRACTOR, ITS SUBCONTRACTOR, OR ANY OTHER PARTY FOR WHOSE ACTS THEY MAY BE LIABLE (EACH, AN “INDEMNIFYING PARTY”); OR (B) THE REFUSAL OR**

FAILURE TO COMPLY WITH ANY OBLIGATION IN THE AGREEMENT BY AN INDEMNIFYING PARTY; OR (C) VIOLATION OF APPLICABLE LAW(S) BY AN INDEMNIFYING PARTY.

12.1.1 Notwithstanding the foregoing provisions of Section 12.1, Contractor shall not be obligated to indemnify the Indemnified Parties from or against a Claim resulting from Owner's negligence when such negligence is the sole and proximate cause of the Damage which is the basis of the Claim. In the event Contractor 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.

12.2 INTELLECTUAL PROPERTY. CONTRACTOR SHALL PROTECT AND INDEMNIFY OWNER FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, ARISING BY OR OUT OF ANY OF THE WORK PERFORMED HEREUNDER OR THE USE BY CONTRACTOR, OR BY OWNER AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CONTRACTOR DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER'S OR DESIGN 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 CONTRACTOR AND SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT OWNER'S EXPENSE.

12.3 Survival. The indemnities contained herein shall survive Final Completion and/or the termination of this Agreement.

ARTICLE 13 – WARRANTIES

13.1 Warranties.

13.1.1 Contractor warrants, represents, covenants and agrees that (a) all of the services to be performed by Contractor, including its agents, representatives and consultants, pursuant to this Agreement will be of the highest standards of care, skill, diligence and professional competence and quality which prevail among similar businesses and organizations of comparable experience, size, knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving projects such as the Project, and (b) the materials and equipment provided under this Agreement will be of good quality and new unless otherwise required or permitted by this Agreement, that the construction will be free from faults and defects and that the construction will conform to the requirements of the Contract Documents. Contractor shall be responsible for correcting Work that does not comply with the Contract Documents at Contractor's sole expense, unless Owner specifically agrees in writing to accept the Work as-is. Further, Contractor warrants to Owner the sufficiency and completeness of all drawings, specifications and other information furnished or provided by or on behalf of Contractor and that such items will be free from material errors and omissions.

13.1.2 Contractor warrants, represents, covenants, and agrees that all persons connected with

Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

13.1.3 Contractor warrants, represents, covenants, and agrees to call to Owner's attention anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to Contractor (by Owner or any other party) which it regards in its opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such document or data is furnished. Nothing shall excuse or detract from Contractor's responsibilities or obligations hereunder in a case where such document or data is furnished unless Contractor advises Owner in writing that in its opinion such document or data and any requests made therein for action are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes Contractor to proceed in accordance with the data as originally given.

13.1.4 Contractor warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder in the best way and in the most expeditious and economical manner consistent with the interests of Owner.

13.1.5 Contractor warrants, represents, covenants, and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the obligations required hereunder.

13.1.6 Contractor warrants, represents, and agrees that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement and perform its obligations herein, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

13.1.7 Neither the execution and delivery of this Agreement by Contractor nor the performance of its obligations hereunder will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, by any partnership agreement by which Contractor is bound, or any agreement by which Contractor is bound or to the best of Contractor's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Contractor.

13.2 Certification of No Asbestos Containing Materials or Work. Further to the provisions of Section 13.7 of the UGC:

13.2.1 Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

13.2.2 Contractor's certification shall be delivered to Owner at Substantial Completion.

13.2.3 Contractor shall take whatever measures it reasonably deems necessary to insure that all employees and Subcontractors (including suppliers and fabricators), and their assigns, comply with the requirements of this section.

13.2.4 Each Subcontractor shall provide a notarized statement that no Asbestos Containing Building Materials (“ACBM”) has been used, provided, or left on this Project with each of its/his/her invoice.

13.2.5 Contractor shall provide to the extent deemed necessary for compliance by the State, data sheets and/or labels as proof of compliance.

13.3 No Waiver. Contractor’s duties as set forth herein shall at no time be in any way diminished by reason of any approval by Owner nor shall Contractor be released from any liability by reason of such approval by Owner, it being understood that Owner at all times is ultimately relying upon Contractor’s skill and knowledge in performing the services required hereunder.

ARTICLE 14 – BONDS & INSURANCE

14.1 Payment and Performance Bonds. Contractor shall provide performance and payment bonds on forms prescribed by Owner in accordance with the requirements set forth in the UGC and SGC. The penal sum of the payment and performance bonds shall be equal to the Contract Sum. The bond forms prescribed by Owner are published on Owner’s Legal Affairs website: <https://uhsystem.edu/legal-affairs/general-counsel/construction/construction-contracts-and-forms/index.php>.

14.2 Coverage Requirements. Contractor shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed and approved in writing by Owner. Approval of the insurance by Owner shall not relieve nor decrease the liability of Contractor hereunder. Contractor shall carry the following insurance in addition to the insurance policies and coverage referenced in Section 5.2 of the UGCs:

14.2.1 Contractor is required to carry Pollution Legal Liability insurance at a limit of not less than: \$1,000,000 per occurrence/aggregate; \$2,000,000 per occurrence/ aggregate; or \$5,000,000 per occurrence/aggregate, with a minimum of three years’ Discover (tail) reporting period and a retroactive date that equals or precedes the Effective Date of this Agreement or Contractor’s performance hereunder; Contractor is not required to carry Pollution Legal Liability insurance; and

14.2.2 Builder’s Risk policy is required. Coverage must not exclude or have a lower sub-limit for Named Windstorm or Flood than the full value of the cost of the Work; Contractor is not required to carry Builder’s Risk policy; and

14.2.3 “Umbrella” liability insurance is not required / is required in an amount not less than \$_____.

14.3 For All Insurance Required of Contractor.

14.3.1 All insurance coverage shall be 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. Contractor shall

provide Owner with legally sufficient evidence of all coverage required under this Agreement. Under no circumstances shall Contractor self-insure any portion of the Project; Contractor's violation of any portion of this ARTICLE 14, including the prohibition of self- insurance, shall constitute a default by Contractor of its obligations under this Agreement and shall empower Owner to terminate this Agreement for cause immediately and/or pursue any other remedy available to Owner.

14.3.2 No policy may have a deductible (or retention) of more than \$100,000. These representations shall be documented in the Certificates of Insurance provided to Owner. When a retention or deductible exceeds \$25,000, Owner shall have the right, but not the obligation, to request from Contractor and to review Contractor's most recent annual report or audited financial statement. In any such event, Contractor shall promptly deliver any such documentation to Owner upon request.

14.3.3 Owner reserves the right to review the insurance requirements set forth in this ARTICLE during the effective period of the Agreement and to make reasonable adjustments to the insurance coverages and limits when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, or the claims history of the industry and/or Contractor.

14.3.4 At any time, Owner shall be entitled upon request, and without expense, to receive copies of all policies and all endorsements to such policies. Owner may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such policies.

14.3.5 Contractor shall bear the cost for all deductibles and actual losses not covered by insurance required under this Agreement.

14.4 Construction Manager is/ is not authorized to carry CCIP underneath this Agreement. Construction Manager's Controlled Insurance Program. Construction Manager may secure commercial general liability insurance (which may or may not also include worker's compensation insurance) under a Contractor Controlled Insurance Program ("CCIP"), provided Owner, in its sole discretion, determines that such coverage meets or exceeds the coverage requirements hereunder and is a cost-effective alternative to conventional coverage.

14.4.1 If a CCIP is implemented, Construction Manager and all subcontractors (of every tier) will be required to participate, except as otherwise agreed by Owner. Further, if a CCIP is implemented, each subcontractor shall be responsible for notifying any lower tier subordinate contractors that a CCIP is being utilized for the Project and for supplying all requested information available to such subcontractor. Each subcontractor shall submit each bid without the cost for such insurance. For bids obtained prior to the implementation of the CCIP, each subcontractor shall separately itemize the cost for such coverage which shall be deducted from the subcontract price in the event a CCIP is timely implemented. Construction Manager shall have the responsibility for reviewing any such itemization for accuracy.

14.4.2 Construction Manager and all subcontractors, including all subordinate subcontractors, shall carry and maintain general liability and workers compensation coverage for offsite activities and such other coverages consistent with the respective requirements set forth in Section 5.2 of the UGC. In addition, those insurance requirements set forth in Section 5.2 of the UGC shall, where applicable, apply to the insurance coverage under the CCIP, including, but not limited to the

requirement that Construction Manager and each such enrolled subcontractor and subordinate subcontractor must provide evidence of insurance as outlined above.

- 14.4.3 Owner shall be a Named Insured or Additional Named Insured with regard to any implemented CCIP coverage on such endorsement form acceptable to Owner. Those parties required to be named as Additional Insureds under the Insurance Requirements set forth above or to be indemnified by Construction Manager under the Agreement or the UGC shall be added as Additional Insureds with regard to any CCIP coverage implemented.
- 14.4.4 Owner shall have the right to review and must approve the CCIP policy, program, and manuals prior to implementation.
- 14.4.5 Notwithstanding the “umbrella” minimum limits set forth above, the umbrella / excess annual limits of the CCIP shall not be less than \$50,000,000.00, until completion of the Project, with no “shared limits” (i.e., limits must be dedicated to the Project).
- 14.4.6 The CCIP shall provide for completed operations coverage for 10 years following Substantial Completion of the entire Work with the minimum umbrella / excess annual limits for completed operations of not less than \$20,000,000.00, with no “shared limits” (i.e., limits must be dedicated to the Project).
- 14.4.7 CCIP shall not contain a “cross-suits exclusion” (which excludes coverage for claims brought by one insured against another insured under the policy) or a “no damage to Project exclusion.”
- 14.4.8 All CCIP deductibles shall be the responsibility of Construction Manager (at no cost to Owner).
- 14.5 For All Insurance Required of Owner

This Project will / will not be added to the University’s Master’s Builder Risk Policy.

14.4.1 *Builder’s Risk Insurance.* Prior to commencement of the Work, Owner shall obtain and thereafter at all times during the performance of the Work (through Substantial Completion) maintain, “**All Risk**” (“**Special Causes of Loss**”) **Builder’s Risk Insurance** insuring the interest of the Owner and the interests of Contractor and Subcontractors (of every tier), but only to the extent of their financial interest in the Work, including coverage against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, for earthquake, theft, vandalism, malicious mischief, windstorm, collapse, boiler and machinery/mechanical breakdown, testing and startup, and terrorism, written on a replacement cost basis in an amount not less than the Contract Sum of the contract (including subcontracts) formed by the Agreement and all authorized and approved Change Orders. Coverage will include all materials, supplies and equipment that are specifically intended for installation into the Work while such materials, supplies and equipment are temporarily located off the Site of the Work, in transit to the Site of the Work, or are temporarily located or stored off the Site of the Work for the purpose of repair, adjustment or storage at the risk of one of the insured parties. At Owner’s option, such coverage shall also cover temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, delay in opening / delay in start-up benefitting Owner, and reasonable compensation for the services and expenses of the Project Architect and such other professionals required as a result of such insured loss (“Soft Costs”). This Section 14.4.1, inclusive of all sections therein, shall supersede the insurance requirements specific to Builder’s

Risk set forth in Section 5.2.2.1.5 of the UGCs.

14.4.1.1 *Deductibles.* Deductibles for any loss under the Builder's Risk shall be borne by the Contractor up to \$100,000 per loss at no cost to Owner, to the extent Contractor or its Subcontractors caused or are responsible for such loss; otherwise, Owner shall pay the deductible.

14.4.1.2 *Storage and In-Transit Limits.* Except as otherwise agreed to by Owner and Contractor, sub-limits for losses arising from materials, supplies and equipment in transit or in storage off the Site of the Work shall be \$5,000,000.00.

14.4.1.3 *Flood Perils.* Builders' Risk shall include coverage for flood perils.

14.4.1.4 *Waiver of Subrogation.* Owner and Contractor waive all rights against each other and their consultants, subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance required to be obtained by the Contract Documents, or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from their separate contractors, subcontractors, and sub-subcontractors. The policies shall provide such waivers of subrogation by endorsement or otherwise. This waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

14.4.1.5 *Tools and Equipment Floater Insurance.* Contractor and its Subcontractors shall be responsible for securing whatever fire and extended coverage each such party may deem necessary for protection against loss of owned, rented, or borrowed capital equipment and tools, including, but not limited to, any tools owned by mechanics, and any tools, equipment, scaffolding, hoists, machinery, trailers, and similar items owned, rented, or borrowed by Contractor or its Subcontractors, respectively. Owner shall have no liability with respect to such equipment and tools. Failure of Contractor or other insured parties to secure such insurance or to maintain adequate levels of coverage shall not obligate Owner or its agents and employees for any losses on owned, rented, or borrowed equipment.

14.4.1.6 *Adjusting Loss.* Any insured property loss or claim of loss shall be adjusted by Owner, and any settlement payments shall be made payable to Owner as trustee for the insured, as their interests may appear, subject to the requirements set forth herein. Owner shall pay Project Architect and Contractor their just shares of insurance proceeds received by Owner, and by appropriate agreements Project Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner. Any such payment shall be conditioned upon receipt of a release from Contractor with regard to insurance proceeds received in such form acceptable to Owner. Prior to settlement of an insured loss, Owner shall notify Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If Contractor does not object, Owner shall settle the loss and Contractor shall be bound by the settlement and allocation. Upon receipt, Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made

or Owner does not terminate the Contract for convenience, Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, Owner may proceed to settle the insured loss, and any dispute between Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved by such dispute resolution procedures authorized by the Contract Documents. Pending resolution of any dispute, Owner may issue a Unilateral Change Order for the reconstruction of the damaged or destroyed Work.

14.4.1.7 *Cooperation and Assistance.* In connection with the Owner's placing and maintaining such property insurance coverage, Contractor shall furnish such project-related information required by Owner's insurance carrier(s) in a timely manner, when requested by Owner or its insurance broker or carrier(s). Contractor shall comply with requirements in the applicable insurance policies and with recommendations from Owner and its insurance carrier(s) with regard to the protection of the Work from loss.

14.4.2. *Owner's Coverage.* Owner, at Owner's option, may purchase and maintain such insurance as will insure Owner against loss of use of Owner's property due to fire or other hazards, however caused. Owner waives all rights of action against Contractor for loss of use of Owner's property, including consequential losses, due to fire or other hazards however caused.

ARTICLE 15 – SUSPENSION AND TERMINATION

Owner may suspend the Work or this Agreement may be terminated in accordance with Article 14 of the UGCs.

ARTICLE 16 – STATE CONTRACTING REQUIREMENTS

16.1 Texas Public Information Act. Owner strictly adheres to all statutes, court decisions, and opinions of the Texas Attorney General with respect to the disclosure of public information under Chapter 552 of the Texas Government, also referred to as the Texas Public Information Act. In accordance with Section 552.002 of the Texas Public Information Act and Section 2252.907 of the Texas Government Code, Construction Manager will make any information created or exchanged with Owner pursuant to this Agreement (and not otherwise exempt from disclosure from the Texas Public Information Act) available in a format reasonably requested by Owner that is accessible to the public.

If the value of this Agreement is over \$1,000,000, then in accordance with Section 552.372 of the Texas Government Code Construction Manager agrees to (a) preserve all "contracting information" (as defined in Section 552.003 of the Texas Government Code) related to the Agreement, as provided by the records retention requirements applicable to Owner for the duration of the Agreement; (b) 16.1.1.2 provide to Owner any contracting information related to the Agreement that is in the custody or possession of Design/Build Contractor on request of Owner no later than ten (10) business days after receiving such request from Owner; and on completion of the Agreement, either: provide at no cost to Owner all contracting information related to the Agreement that is in the custody or possession of Design/Build Contractor or preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to Owner.

Furthermore, Construction Manager Agrees that the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Agreement and Construction Manager agrees that the

Agreement can be terminated if Construction Manager knowingly or intentionally fails to comply with a requirement of that subchapter.

16.2 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.093, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

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

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

16.5 Certifications.

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

16.5.2 *Franchise Tax Certification.* If Contractor is a corporate or limited liability company, Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that it is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

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

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

16.5.5 *Certification regarding Boycotting Israel.* Pursuant to Chapter 2270, *Texas Government Code*, Contractor certifies Contractor (a) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this

Agreement may be terminated and payment withheld if this certification is inaccurate. This provision does not apply to (i) contracts below \$100,000; (2) contracts with a sole-source provider; or (iii) contracts with a non-profit entity, sole proprietorship, or a for-profit entity that has less than ten (10) full time employees.

16.5.6 *Certification regarding Boycotting Energy Companies.* Pursuant to Chapter 2274, *Texas Government Code*, Contractor verifies (a) it does not boycott energy companies and (b) it will not boycott energy companies during the term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate. This provision does not apply to (i) contracts below \$100,000; (2) contracts with a sole-source provider; or (iii) contracts with a non-profit entity, sole proprietorship, or a for-profit entity that has less than ten (10) full time employees.

16.5.7 *Certification regarding Discrimination against Firearm Entities or Trade Associations.* Pursuant to Chapter 2274, *Texas Government Code*, Contractor verifies (a) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (b) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate. This provision does not apply to (i) contracts below \$100,000; (2) contracts with a sole-source provider; or (iii) contracts with a non-profit entity, sole proprietorship, or a for-profit entity that has less than ten (10) full time employees.

16.5.8 *Financial Interest.* Contractor certifies that no member of the Owner's Board of Regents, or executive officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this Agreement.

ARTICLE 17 – MISCELLANEOUS PROVISIONS

17.1 Limitation of Liability. Except for the obligation of Owner to pay Contractor certain fees, costs, and expenses to the extent expressly set forth in this Agreement, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Interest on any award against 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 Contractor, 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 Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

17.2 Assignment. This Agreement is a personal service contract for the services of Contractor, and neither Contractor’s interest in this Agreement (including, but not limited to Contractor’s fees due hereunder), nor Contractor’s duties hereunder may be assigned or delegated to a third party except as specifically set forth in this Agreement.

17.3 Dispute Resolution. Disputes arising from this Agreement will be handled pursuant to Article 15 of the UGC.

17.4 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.

17.5 Governing Law and Venue. This Agreement will be governed by the laws of the State of Texas without reference to its conflicts of law provisions. Venue for any suits arising from this Agreement will be in a court of competent jurisdiction in Harris County, Texas.

17.6 Waivers. No delay or omission by either Party in exercising any right or power accruing upon the non-compliance or failure of performance by the other Party of any provision of this Agreement or the Contract Documents will impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants, conditions or agreements of this Agreement or any of the Contract Documents to be performed by the other party will not be construed to be a waiver of any subsequent breach of this Agreement or the Contract Documents or of any other covenant, condition or agreement contained in this Agreement or the Contract Documents.

17.7 Amendments. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each Party.

17.8 Binding. This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and their respective permitted assigns and successors.

17.9 Appointment. Contractor shall act only upon instructions from Owner’s Designated Representative unless Owner advises Contractor otherwise in writing.

17.10 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.

17.11 New Laws. Owner and Contractor agree that if there is a change in any laws, rules or regulations

affecting the Project and enacted after the Effective Date of this Agreement, the Parties will enter into good faith negotiations to renegotiate the affected terms of this Agreement.

17.12 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; or by deposit with Federal Express or other reputable overnight courier for overnight delivery. Notice given as required herein will be effective on the date actually received at the address to which such notice was sent, or if delivery is refused or not accepted, such notice shall be effective on the date of such refusal or failure to accept delivery. For purposes of notice, the addresses of the Parties are set forth in Section 1.1 or to such other address or facsimile number that the Parties may designate in writing.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Owner and Contractor have executed this Agreement as of the dates set forth below.

CONTRACTOR:

By:

[_____]_____
[_____]_____

Date:

Federal Tax ID No. [_____]

ATTEST:

By:

[_____]_____
[_____]_____

Date:

OWNER:

UNIVERSITY OF HOUSTON SYSTEM

By:

[_____]_____
[_____]_____

Date:

APPROVED AS TO FORM:

By:

[_____]_____
[_____]_____.

Date:

EXHIBIT A

LIST OF DRAWINGS, SPECIFICATIONS, ALTERNATES AND ADDENDA

EXHIBIT B

MILESTONE SCHEDULE

Construction Start	_____
Substantial Completion	_____
Final Completion	_____

EXHIBIT C
SPECIAL CONDITIONS FOR CONSTRUCTION