OWNER-CONTRACTOR AGREEMENT

BETWEEN

THE

UNIVERSITY OF HOUSTON SYSTEM

AND

CONTRACTOR

CONTRACT NO. _____ **PROJECT NO. _____**

****

This Owner-Contractor Agreement ("***Agreement***") is entered into effective as of _____, _____ ("***Contract Date***"), by and between **the University of Houston System** ("***Owner***")

and

Name:
Address:

Phone:
Fax:

("***Contractor***") (also sometimes referred to as "***Party***" individually or, collectively with Owner, "***Parties***") for the following project (the "***Project***"):

Name:

Address:

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EXHIBITS

Exhibit A List of Drawings, Specifications, Alternates and Addenda

Exhibit B Milestone Schedule

Exhibit C Special Conditions for Construction

ARTICLE 1 - DEFINITIONS; INTERPRETIVE

1.1 Definitions.

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

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.

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***").

Construction Phase Services: the coordination, implementation and execution of the Work required by this Agreement and as further defined in ARTICLE 5.

Contract Documents:

1. this Agreement and all exhibits and attachments listed, contained or referenced in this Agreement, including the current version of the State of Texas Uniform General Conditions for Construction Contracts ("***UGC***") published by the Texas Facilities Commission on its website, and the University of Houston Supplemental General Conditions ("***SGC***"), which has been delivered to Contractor or may be found online at http://www.uh.edu/legal-affairs/contract-administration/pdf-documents/Suppplemental_general_special_conditions.pdf, and the Project Special Conditions (the "***Special Conditions***") which are attached hereto as **Exhibit C**;
2. the Drawings and Specifications, and details and other documents developed by Design Consultant for the Project or any portion thereof and all documents required and/or referenced therein,
3. any Change Orders,
4. the HUB Subcontracting Plan, and
5. any and all addenda to the foregoing issued prior to the Effective Date.

The Contract Documents form the entire and integrated contract between Owner and Contractor and supersede all prior negotiations, representations or agreements, written or oral. The terms, "Contractor" and "General Contractor" in the UGC and SGC shall be understood to refer to Contractor.

Contract Sum: _____ (_____).

Contractor's Designated Representative: as set forth in Section 4.2.

Contract Time: as defined in the UGC; provided, however, Contractor shall have _____ calendar days following Owner's Notice to Proceed with construction to achieve Substantial Completion and thirty (30) additional calendar days to fully complete the Construction Phase Services.

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.)

Drawings and Specifications: the drawings, specifications, details and other documents developed by Project Architect to describe the Project and accepted by Owner.

Excusable Delay: as defined in the UGC.

Final Completion: the date on which the Construction Phase Services are complete in accordance with the Contract Documents.

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.

Late Completion Day: as defined in Section 3.2.

Program: Owner's comprehensive facility program for the Project.

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.

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.

Schedule: as defined and described in Section 3.3.

Standard Specifications: the construction and design requirements and standards of the University of Houston Office of System Facilities Planning and Construction ("***FPC***"), and various building and life safety codes as specified by FPC which are hereby incorporated by reference.

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.

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.

1.2 Interpretive.

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

1.2.2 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.

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

1.2.4 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 2- SCOPE OF WORK

Contractor shall furnish all of the materials and perform all of the work shown on the Drawings and described in the Specifications, in accordance with Owner's requirements and the terms of the Contract

Documents, including the Drawings, Specifications, alternates and addenda prepared by Project Architect listed on **Exhibit A**.

ARTICLE 3- TIME

3.1 Time is of the Essence. Time limits stated in the Contract Documents, including the Contract Time (as defined above) are of the essence in this Agreement. 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.

3.2 Liquidated Damages. For each consecutive calendar day after the Completion Date that Contractor fails to achieve Substantial Completion and/or Final Completion (each, a "***Late Completion Day***"), an amount will be deducted from any money due or that becomes due Contractor in accordance with the schedule below (or such lesser amount as may be required by law), not as a penalty but as liquidated damages representing the Parties' estimate as of the Contract Date of the damages Owner will incur for late completion. The Parties stipulate and agree that the ascertainment of actual damages would be impractical, unduly burdensome, and cause unnecessary delay and that this amount of daily liquidated damages is reasonable.

Late Completion Day(s)	***Per Diem Amount***
0-15	
16-30	
31+	

3.3 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 ten (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.

ARTICLE 4- CONTRACTOR'S GENERAL OBLIGATIONS

4.1 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.

4.1.1 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.

4.2 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.

4.3 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.

4.4 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.

4.5 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.

4.6 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 5- CONSTRUCTION PHASE SERVICES

5.1 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***"):

5.2 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.

5.2.1 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.

5.3 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.

5.3.1 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.

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

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

5.4 Personnel. Contractor shall:

5.4.1 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.

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

5.4.3 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.

5.5 Meetings. Contractor shall:

5.5.1 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.

5.5.2 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.

5.6 Cost Control. Contractor shall:

5.6.1 Maintain Audit Records as required by ARTICLE 9.

5.6.2 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.

5.7 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.

5.8 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:

5.8.1 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.

5.8.2 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.

5.8.3 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.

5.8.4 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.

5.8.5 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 6 - CONTRACT SUM; PAYMENTS

6.1 Contract Sum. Owner shall pay Contractor for performance of its obligations under this Agreement, subject to additions and deductions provided herein, the Contract Sum in accordance with the provisions of this ARTICLE 6.

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

6.3 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).

6.3.1 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.

6.4 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.

6.4.1 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.

6.4.2 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*.

6.4.3 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.

6.5 Offsets; Deductions; Withholding.

6.5.1 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.

6.5.2 Amounts assessed as liquidated damages in accordance with Section 3.2 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.

6.5.3 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:

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

6.5.3.2 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;

6.5.3.3 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;

6.5.3.4 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;

6.5.3.5 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.

6.5.3.6 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;

6.5.3.7 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;

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

6.5.3.9 Owner's right to withhold payment is contingent on giving Contractor a minimum of seven (7) 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 (7) calendar days.

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

6.7 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.

6.7.1 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.

6.8 No Waiver.

6.8.1 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.

6.8.2 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.

6.9 Audit. As set forth in greater detail in ARTICLE 9, 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 (1) inspecting the pertinent books and records of Contractor during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Contractor's business employees; (4) visiting the Project site; and (5) other reasonable action.

ARTICLE 7 - OWNER'S RESPONSIBILITIES

7.1 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.

7.2 Owner will cooperate timely in providing information to the other members of the Project Team regarding its requirements for the Project.

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

7.4 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.

7.5 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.

7.6 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.

7.7 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.

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

ARTICLE 8 - OWNERSHIP AND USE OF DOCUMENTS

8.1 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.

8.2 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 9 - RECORD RETENTION; OWNER AUDIT RIGHTS

9.1 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 (4) 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.

9.2 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.

9.2.1 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.

9.2.2 In the event Contractor does not fully comply with the requirements of this ARTICLE 9, 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 9.

ARTICLE 10 - INDEMNITY

10.1 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.

10.1.1 Notwithstanding the foregoing provisions of Section 10.1, 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.

10.2 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.

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

ARTICLE 11 - WARRANTIES

11.1 Warranties.

11.1.1 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.

11.1.2 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.

11.1.3 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.

11.1.4 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.

11.1.5 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.

11.1.6 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.

11.1.7 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.

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

11.2.1 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.

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

11.2.3 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.

11.2.4 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.

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

11.3 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 12 - BONDS & INSURANCE

12.1 Payment and Performance Bonds. On the Contract Date, 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: http://www.uh.edu/legal-affairs/contract-administration/contract-documents/department-specific-contracts-and-forms/index.php#facilities

12.2 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 Owner and Contractor's Protective Liability insurance at a limit of liability not less than $2,000,000 per occurrence; Contractor's Pollution Legal Liability insurance at a limit of not less than $1,000,000 per occurrence and $2,000,000 annual aggregate, with a minimum of three (3) years' Discover (tail) reporting period and a retroactive date that equals or precedes the effective date of this Agreement or Contractor's performance hereunder, as well as the insurance policies and coverage referenced in Section 5.2 of the UGC; *provided*, however, for the Builder's Risk policy, 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. The coverages required under this Agreement are part of the General Conditions.

12.3 For All Insurance Required of Contractor.

12.3.1 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 12, 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.

12.3.2 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.

12.3.3 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.

12.3.4 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.

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

ARTICLE 13 - PROJECT TERMINATION AND SUSPENSION

13.1 Mutual Right to Terminate. Either Party may terminate this Agreement upon fifteen (15) days' prior written notice should the other Party fail substantially to perform in accordance with its terms through no fault of the Party initiating the termination, and such failure to perform is not cured within such fifteen (15) day period.

13.2 Termination by Owner. Owner may terminate this Agreement:

13.2.1 Upon at least seven (7) days' written notice to Contractor in the event that the Project will be temporarily or permanently abandoned or if Owner determines not to proceed with the Project.

13.2.2 Upon written notice to Contractor for Contractor's Material Breach. "***Material Breach***" means (a) Contractor's failure or refusal to satisfy a material obligation of Contractor under this Agreement, and/or (b) Contractor's repeated failure or refusal to satisfy one or more obligations of Contractor under this Agreement.

13.2.3 Upon written notice to Contractor for Owner's convenience.

13.3 Contractor's Obligations on Termination. As of the date of any termination of this Agreement, Contractor shall furnish to Owner all statements, accounts, reports and other materials as are required by this Agreement or as have been prepared by Contractor in connection with Contractor's responsibilities under this Agreement. Owner may use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise. Upon receipt of Owner's notice of termination, Contractor shall remove its personnel, agents, contractors, subcontractors and equipment from Owner's property.

13.3.1 Termination of this Agreement shall not relieve Contractor or any of its employees, subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, or other misconduct of such parties. In the event of a termination, Contractor hereby consents to Owner's right to retain a substitute Contractor to complete the services under this Agreement, with the substitute Contractor having all rights and privileges of the original Contractor.

13.3.2 In the event of termination that is not the fault of Contractor, Contractor shall be entitled to compensation for all services performed as of the termination date, provided, however,

Contractor has delivered to Owner such statements, accounts, reports and other materials required by the Contract Documents, together with all reports, documents and other materials prepared by Project Architect prior to termination. Upon such payment, Owner shall have no further obligation to Contractor.

13.4 Suspension of Project. If Owner suspends or abandons in whole or in part the Project, Contractor shall be compensated for all services performed prior to receipt of written notice from Owner of such suspension or abandonment, except as otherwise provided under this Agreement.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

14.1 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.

14.2 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.

14.3 Statutory Certifications. By signing this Agreement, Contractor certifies as follows:

14.3.1 "Under Section 231.006, *Texas Family Code*, Contractor certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

14.3.2 "Under Section 2155.004, *Texas Government Code*, Contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

14.4 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 (7) days of beginning work on Owner's property in accordance with *Texas Code of Criminal Procedure* Article 62.153 if such individual (a) is required to register as sex offenders with local law enforcement authorities in accordance with Chapter 62 of the *Texas Code of Criminal Procedure*, and (b) will be on Owner's property for fourteen (14) or more consecutive days or for more than thirty (30) days in any calendar year.

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

14.6 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.

14.7 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.

14.8 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.

14.9 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.

14.10 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.

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

14.12 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.

14.13 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.

14.14 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 will be as follows or to such other address or facsimile number that the Parties may designate in writing.

If to Owner: Executive Director
select...
4211 Elgin
Houston, Texas 77204

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

If to Contractor:

with a copy to:

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 Contractor. Subject to the immediately preceding sentence, the exhibits listed on page ii (immediately following the Table of Contents) are hereby incorporated by reference for all purposes as if fully set forth herein.

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Contract Date.

Corporations/LLC's: Attest:

CONTRACTOR

_____

Corporate Secretary

By:_____

Name:

Title:

Other business forms: Witness:

Date of Signature:_____

_____

Seal:

[signatures continue on following page]

UNIVERSITY OF HOUSTON SYSTEM

By:_____ Date: _____
Name:
Title:

By:_____ Date: _____
Name:
Title:

By:_____ Date: _____
Name:
Title:

By:_____ Date: _____
Name:
Title:

By:_____ Date: _____
Name:
Title:

By:_____ Date: _____
Name:
Title:

EXHIBIT A

LIST OF DRAWINGS, SPECIFICATIONS, ALTERNATES AND ADDENDA

[See attached]

EXHIBIT B

MILESTONE SCHEDULE

[See attached]

EXHIBIT C

SPECIAL CONDITIONS FOR CONSTRUCTION

select...