

AGREEMENT
for
MISCELLANEOUS ARCHITECTURAL SERVICES
on
PROJECTS OF LIMITED SCOPE

This Agreement is made as of _____, 20__ (the "Effective Date"), by and between:

The Owner:

and

The Architect:

This Agreement is for the provision of miscellaneous architectural and technical support services for renovation, repair and minor construction projects of limited scope, to be performed on a non-exclusive, indefinite quantity basis, as requested by the Owner in accordance with the terms of this Agreement. Architect represents that he has the knowledge, ability, skills and resources to provide such services in accordance with the terms and requirements of this Agreement.

The Owner and the Architect agree as follows:

ARTICLE 1
TERM OF AGREEMENT

1.01 **Initial Term:** This initial term of this Agreement shall begin on the effective date and shall expire twelve (12) months after that date unless renewed or terminated in accordance with the terms of the Agreement.

1.02 **Renewal Option:** The Owner has the option to renew this Agreement terms for two (2) successive twelve (12) month periods upon written notice to the Architect at least sixty (60) days prior to the expiration of the initial or any subsequent term.

1.03 **Completion of Work in Progress:** The Owner has the option to extend the term of this Agreement, or any renewal period, as necessary for Architect to complete work on any project approved by the Owner prior to the expiration of the Agreement.

ARTICLE 2
MAXIMUM AUTHORIZED CONTRACT SUM

2.01 **Maximum Contract Sum:** The total, maximum, not-to-exceed amount of money authorized for payment to Architect for services provided pursuant to this Agreement is _____ Dollars (\$_____.00). Total billings for authorized work performed by the Architect shall not exceed this maximum contract sum. The maximum contract sum shall not be increased except by written amendment to this Agreement executed by the Owner and the Architect.

2.02 **No Minimum Amount of Work:** Owner makes no representations regarding the amount or type of services, if any, that Architect will be asked to provide to Owner during the term(s) of this Agreement. It is expressly understood that the Owner is under no obligation to request any services from Architect and no minimum amount of work is required or contemplated under this Agreement. All service requests will be made by the Owner on an as-needed basis, subject to future agreement on the scope of the work and the fee.

ARTICLE 3 SCOPE OF WORK

3.01 **In General:** The Architect agrees to provide architectural and technical services on a per-project basis as requested by the Owner in accordance with the terms of this Agreement. These services are generally describes as, but are not limited to:

- Interior Modifications and Renovations including Programming
- Exterior Restorations and Waterproofing
- Roofing Improvements and Repairs
- Walkway, Roadway, and Parking Lot Work
- Architectural Work Associated with Utilities
- Pre-Engineered CMU and Other Small Buildings
- Life Safety System Work
- ADA Upgrades and Inspections
- Signage and Wayfinding
- Maintenance Projects

3.02 **Project Scope:** The specific scope of work for each project shall be determined in advance and in writing between the Owner and the Architect.

3.03 **Project RFP:** The Owner shall prepare a Project Request for Proposal (“Project RFP”) identifying the project and describing, in general, the intended scope and character of the project, the preliminary cost estimate and schedule for the project, and the basic services to be provided by the Architect for the project.

3.04 **Project Proposal:** In response to a Project RFP, the Architect shall provide Owner with a written Project Proposal. The Project Proposal shall include the following:

- a. An narrative description of Architect’s understanding of the project scope of work;
- b. A detailed statement of the basic and additional services anticipated for the project, including a list of deliverables;
- c. A description of particular phases of the scope of the work, if applicable;
- d. A Fee Proposal detailing:
 1. the total fee for providing the basic services expressed as a “Not to Exceed” amount;
 2. the total fee for providing additional services expressed as a “Not to Exceed” amount; and
 3. the total anticipated amount for reimbursable expenses;
- e. A proposed date to commence the work;
- f. A list of all consultants, persons and firms that Architect proposes to use in the performance of Architect’s scope of work;
- g. A schedule of hourly billing rates for any consultants that Architect proposes to use in the performance of Architect’s scope of work;
- h. A HUB Subcontracting plan, if required;

- i. Any qualifications or conditions applicable to the Project Proposal; and
- j. A summary statement of the amount of all previous proposals entered into under this Agreement to date.

3.05 **Project Proposal Review:** The Owner and the Architect shall review Architect's Project Proposal and negotiate any changes, clarifications or modifications thereto. The Architect shall submit a revised Project Proposal incorporating any changes, clarifications or modifications made in the review process. The Owner may accept, reject or seek modification of any Project Proposal.

3.06 **Notice to Proceed:** Upon approval of a Project Proposal by the Owner, the Owner shall issue a written Notice to Proceed. The Notice to Proceed authorizes the Architect to begin the work identified in the Project Proposal on the date specified in the Notice. The Notice to Proceed shall include a Purchase Order number specific to the project.

ARTICLE 4 ARCHITECT'S GENERAL SERVICES AND RESPONSIBILITIES

4.01 **Project Manager:** The Architect shall manage the Architect's services and administer any project authorized pursuant to this Agreement. The Architect shall provided and/or coordinate the basic services necessary and reasonably inferable for the complete performance of any project authorized pursuant to this Agreement.

4.02 **Standard of Care:** Project Architect agrees and acknowledges that Owner is entering into this Agreement in reliance on Project Architect's represented professional abilities with respect to performing Project Architect's services, duties, and obligations under this Agreement. Project Architect shall perform its Services (i) with the professional skill and care ordinarily provided by competent architects practicing in the same or similar locality and under the same or similar circumstances and professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect; and (iii) in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. There are no obligations, commitments, or impediments of any kind known to the Project Architect that will limit or prevent performance by Project Architect of its services. Project Architect hereby agrees to correct, at its own cost, any of its Services, and the services of its consultants, that do not meet the standard of care.

Architect shall at all times provide a sufficient number of qualified personnel to accomplish Architect's services within the time limits set forth in the schedule.

4.03 **Compliance with Laws:** Architect shall endeavor to perform Architect's Services in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project.

4.04 **Existing Conditions:** Architect shall use reasonable efforts to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Architect by Owner, or any other party, that Architect uses for the Project.

4.05 **Correction of Work:** Architect's services shall be reasonably accurate and free from material errors or omissions. Upon notice, Architect shall promptly correct any known or discovered error, omission, or other defect without any additional cost or expense to Owner.

4.06 **Phasing:** The Architect shall not proceed beyond any previously authorized phase of the work for a project unless authorized by the Owner in writing, except at the Architect's own financial risk. Applicable phases of the scope of work shall be identified in the Project Proposal.

4.07 **Representative:** Architect shall designate a representative primarily responsible for Architect's services under this Agreement. The designated representative shall act on behalf of Architect with respect to all phases of Architect's services and shall be available as required for the benefit of any project and the Owner. The designated representative shall not be changed without prior approval of the Owner, which approval shall not be unreasonably withheld.

4.08 **Documentation:** The Architect shall fully document its project activities, in drawings, reports or other methods as appropriate to the scope of work and as identified in the Project Proposal. The Architect shall bear the cost of providing all plans, specifications and other documents used by the Architect and its consultants.

ARTICLE 5 THE OWNER'S RESPONSIBILITIES

5.01 **Project Program:** The Owner shall provide a Project RFP setting forth the Owner's description of the project scope; preliminary project budget; schedule; objectives, characteristics and constraints; and a description of the basic services to be provided by the Architect for the project.

5.02 **Representative:** The Owner designates the Office of Facilities Services as its representative authorized to act in the Owner's behalf with respect to the Project. The Owner designates the Director of Facilities Services or his designee as its representative for the purpose of administering this contract.

5.03 **Special Information:** The Owner shall furnish available property, boundary, easement, right-of-way, topographic and utility surveys; plans and specifications; and special data and conditions relevant to the project. Owner shall furnish other special investigations of the Project site as requested by the Architect and as reasonably necessary for the Project. Architect shall exercise reasonable care in relying upon this information in the performance of its services under this Agreement. Owner makes no warranties or representations as to the accuracy or suitability of information provided to the Architect by the Owner or by others.

5.04 **Entry on Land:** The Owner shall assist Architect in gaining entry to state owned or controlled property as necessary for Architect to perform its services under this Agreement.

5.05 **Administrative Services:** The Owner shall furnish all legal, accounting, auditing and insurance counseling services that it requires for the Project.

5.06 **Review of Work:** The Owner will review the Architect's documents at the completion of each stage of development as described in the Project Proposal. Owner's review comments or decisions regarding the documents will be furnished to the Architect in a reasonably prompt manner. The Owner will notify the Architect in writing of any material error or omission or other defect in the project or any conflict in the contract documents that the Owner becomes aware of, but Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

5.07 **Time for Response:** The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architect's services and of the Work.

ARTICLE 6
ACCEPTANCE OF WORK

6.01 **Owner's Satisfaction:** All work performed under this Agreement shall be completed to the satisfaction of the Owner's representative assigned to the project. The Owner's representative shall decide all questions regarding Architect's performance under the Agreement and such decisions shall be final and conclusive.

6.02 **Correction of Work:** Should Architect's services not conform to the requirements of this Agreement and the Project Proposal as determined by the Owner's representative, Owner may order the Architect to re-perform such services at no additional expense to the Owner or deduct the fees for such services from any other fees payable to the Architect.

6.03 **Liability:** Owner's approval or acceptance of Architect's services will not release Architect from any liability for such services because Owner is, at all times, relying upon Architect's skill and knowledge in performing Architect's services.

ARTICLE 7
COMPENSATION FOR SERVICES RENDERED

7.01 **Owner's Approval Required:** Owner agrees to pay Architect for those services rendered at Owner's specific request, in advance and in writing.

7.02 **Scheduled Billing Rates:** Attached as Exhibit A, and incorporated herein, is Architect's Schedule of Billing Rates, including hourly billing rates and/or per service billing rates as applicable. The Billing Rates include all costs for any identified services and the Architect shall not be entitled to any additional compensation for providing those services. The Schedule of Billing rates shall remain in full force and effect for the term of this Agreement, including all renewal periods.

7.03 **Basic Service:** For Basic Services rendered in connection with any project authorized pursuant to this Agreement, Architect shall be compensated on an hourly rate basis or on a per-service fee basis in accordance with Architect's Project Proposal, up to the maximum "Not to Exceed" amount approved in Architect's Project Proposal.

7.04 **Additional Services:** Additional Services are services not identified or reasonably inferable as Basic Services included in a Project Proposal. Additional Services shall be provided only if authorized or confirmed in writing by the Owner. For approved Additional Services provided in connection with any project authorized by this Agreement, Architect shall be compensated on an hourly rate basis or on a per-service fee basis in accordance with Architect's Additional Services Proposal, up to the maximum "Not to Exceed" amount approved in Architect's Additional Services Proposal.

7.05 **Consultant Costs:** Unless approved in advance by the Owner, Architect shall pay for all consultant services and costs associated with his services under this Agreement, whether basic services or additional services, out of his fees. Owner is not responsible for any such consultant fees or costs unless otherwise agreed to in writing.

ARTICLE 8
REIMBURSABLE EXPENSES

8.01 **Reimbursable Expenses:** Reimbursable Expenses are in addition to compensation for basic and additional services. Reimbursable Expenses recoverable by the Architect under this Agreement are limited to the following:

- a. Expenses in connection with out-of-state travel, including coach class air fare and reasonable living expenses, as directed and approved in advance and in writing by the Owner;
- b. Expenses in connection with in-state travel, including reasonable travel and living expenses, for Architect's employees and consultants when a project is located more than 50 miles from the place where they are usually and customarily assigned, but only as directed and approved in advance and in writing by Owner;
- c. Fees paid for securing approval of authorities having jurisdiction over any particular project;
- d. Expenses of reproductions, printing, collating, postage and handling of Drawings, Specifications, Reports and other documents or other project related work product, but excluding plotting costs of drawings, reproductions for the use of Architect and Architect's consultants as well as up to three (3) review sets as necessary for progressive reviews by Owner in accordance with the Project Proposal.
- e. Communication expenses such as long distance telephone, facsimile transmissions, express charges and postage that are directly attributable to the project;
- f. Disbursements made by the Architect under approved subcontracts;
- g. Reasonable costs for rental or use of special equipment, tools, and electronic data processing equipment required in connection with the project if approved in advance and in writing by Owner;
- h. Expense of any additional insurance coverage or limits, requested by the Owner excluding professional liability and errors and omissions insurance required under Basic Services of this contract that exceed those normally carried by the Architect and the Architect's consultants.

8.02 **Compensation for Reimbursable Expenses:** The Architect and its employees and consultants, shall be compensated for the actual, out-of-pocket, reasonable costs for all approved Reimbursable Expenses that are incurred solely and directly in connection with the performance of the Architect's services and duties under this Agreement or in the interest of any particular project.

8.03 **Proposal Costs Not Recoverable:** Architect is solely responsible for any expenses or costs, including expenditures of time, incurred by the Architect and its employees and consultants in the development of Project Proposals or Additional Services Proposals. Such expenses or costs are not Reimbursable Expenses.

ARTICLE 9 INVOICING

9.01 **Monthly Invoices:** Architect shall submit a monthly record or invoice of services performed under this Agreement identifying all fees earned and reimbursable expenses incurred in the previous month. Invoices shall be submitted in a format approved by the Owner and must contain at least the following information:

- a. Project Name and Work Order Number;
- b. Owner Agreement Number;
- c. Architect's Tax Identification Number;

- d. Name of Project Manager;
- e. Identification of billing period, by calendar month, to which the invoice applies;
- f. Itemized description of services provided including the names, billing rates and amount of time per task expended by all persons who performed services on the project during the billing period.
- g. Completion status of project by percentage;
- h. Total amount of invoice;
- i. Total amount of prior invoices and maximum contract sum;
- j. Copy of all receipts in support of any reimbursable expenses invoiced;

9.02 **Limited to Maximum Contract Sum:** It is the responsibility of Architect not to provide services or submit invoices that exceed the maximum contract sum. Services provided, and/or expenses incurred that exceed the maximum contract sum without Owner's written consent will be at Architect's financial risk and Owner shall not be obligated to pay for any such services or expenses.

9.03 **Prompt Payment:** For purposes of Texas Government Code § 2251.021(a)(2), the date the performance of service is completed is the date when the Owner's representative approves the invoice. Payment of invoices shall be made within 30 days of Owner's approval.

9.04 **Invoice Submittal:** Invoices shall be submitted to:

Attn: _____

9.05 **Exceptions to Payment:** Regardless of any other provision of this Agreement, Owner shall not be obligated to make any payment requested by Architect under this Agreement if any of the following conditions precedent exist:

- a. Architect is in breach or default under this Agreement;
- b. The requested payment includes services not performed in accordance with this Agreement; provided, however, payment shall be made the balance of the services that are performed in accordance with this Agreement;
- c. The total of Architect's invoices exceed the maximum contract sum;
- d. Architect has failed to make payments promptly to consultants or other third parties used in connection with the services for which Owner has made payment to Architect;
- e. Architect becomes insolvent, makes a general assignment of its rights or obligations for the benefit of its creditors, or voluntarily or involuntarily files for protection under the bankruptcy laws; or
- f. If Owner, in its good faith judgment, determines that the balance of unpaid compensation is insufficient to complete the services required under this Agreement.

9.06 **Partial Payment:** No partial payment by Owner shall constitute or be construed as final acceptance or approval of any services or as a release of any of Architect's obligations or liabilities with respect to such services.

9.07 **Subcontractor Payment:** Architect shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.

9.08 **Final Payment and Release:** The acceptance by Architect or Architect's successors of final payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Architect or Architect's successors have or may have against Owner pursuant to this Agreement except those claims specifically identified in writing by Architect as unsettled at the time of the final request for payment.

ARTICLE 10 ARCHITECT'S ACCOUNTING RECORDS

Architect shall maintain records of costs, expenses and billings pertaining to services performed under this Agreement in accordance with generally accepted accounting principles. Such records shall be available to the Owner or the Owner's authorized representative at mutually convenient times for a period of at least three (3) years after expiration or termination of this Agreement. Owner shall have the right to audit and to verify the details set forth in Architect's billings, certificates, and statements, either before or after payment. The terms of this paragraph shall survive any termination of the Agreement.

ARTICLE 11 OWNERSHIP AND USE OF DOCUMENTS

11.01 All documents prepared by the Architect are instruments of service and shall remain the property of the Architect. The Owner shall be permitted to retain copies, including reproducible copies, of all documents prepared by the Architect for information and reference in connection with the Owner's use and occupancy of the project. Owner shall have an irrevocable, fully paid-up perpetual license and right, which shall survive the termination of this agreement, to use the documents, including the originals thereof, and the ideas and designs contained therein, for any purpose.

11.02 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the project is not to be construed as publication in derogation of the Architect's rights.

ARTICLE 12 TERMINATION OF AGREEMENT

12.01 **Termination for Cause:** This Agreement may be terminated by either party upon ten (10) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured prior to the expiration of the notice period. If a termination for cause under this section is later determined to be improper, the termination shall automatically convert to a termination for convenience under section 12.02 and Project Architects recovery for termination shall be strictly limited to the compensation allowable under section 12.02

12.02 **Termination for Convenience:** This agreement may be terminated for convenience by the Owner in whole or in part, upon at least ten (10) days written notice to the Architect.

12.03 **Compensation:** In the event of termination not the fault of the Architect, the Architect shall be entitled to compensation for all services satisfactorily performed to the termination date, together with approved Reimbursable Expenses then due, provided Architect delivers to Owner statements, accounts, reports and other materials as required for payment along with all reports, documents and other materials prepared by Architect prior to termination.

ARTICLE 13
DISPUTE RESOLUTION

13.01 To the extent that it is applicable, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by the Project Architect to resolve any claim for breach of contract made by Project Architect that is not resolved in the ordinary course of business between Project Architect and Owner.

13.02 Alternative Dispute Resolution Process. Owner may establish a dispute resolution process to be utilized in advance of that outlined in Tex. Gov't Code, Chapter 2260.

13.03 Nothing herein shall hinder, prevent, or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.

13.04 In any litigation between the Owner and the Project Architect arising from this Agreement or this Project, neither party will be entitled to an award of legal fees or costs in any judgment regardless which one is deemed the prevailing party.

13.05 Nothing herein shall waive or be construed as a waiver of the State's sovereign immunity.

13.06 Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Project Architect, in whole or in part. Owner and Project Architect agree that any periods set forth in this Agreement for notice and cure of defaults are not waived, delayed, or suspended by Chapter 2260 or this section.

13.07 In accordance with Chapter 2260, the Owner designates _____ as its representative for the purpose of reviewing Architect's claim(s) and negotiating with Architect in an effort to resolve such claim(s).

ARTICLE 14
INSURANCE

14.01 Contractor, consistent with its status as an independent contractor will carry at its sole cost and will cause its subcontractors to carry, at its sole cost, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-:VII or better, in the following forms and with amounts not less than the following minimum limits of coverage:

14.01.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability - Each Employee	\$1,000,000
Employers Liability - Policy Limit	\$1,000,000

Workers' Compensation policy must include any states where contractor performs operations for University.

[Option: In the event watercraft is used in the course of performing Work, the maritime coverage endorsement must be added unless a separate Protection & Indemnity coverage is maintained. In the event operations are conducted in relation to navigable waters which may qualify employees for United States Longshore & Harbor Workers Compensation Act ("USL&H") benefits, the USL&H endorsement must be added.]

14.01.2	Commercial General Liability Insurance with limits of not less than:
	Each Occurrence Limit \$1,000,000
	Damage to Rented Premises \$ 300,000
	Personal & Advertising Injury \$1,000,000
	General Aggregate \$2,000,000
	Products - Completed Operations Aggregate \$2,000,000

The required Commercial General Liability policy will be issued on a form that insures Contractor's liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

14.01.3	Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage
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[Option: If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.]

[Option: Contractors transporting hazardous materials must provide the MCS-90 endorsement and CA9948 Broadened Pollution Liability endorsement on the Business Auto Liability policy. Policy limits must be in line with Federal requirements.]

14.01.4	Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000, and will be excess over and at least as broad as the underlying coverage as required under sections 11.1.1 Employer's Liability; 11.1.2 Commercial General Liability; and 11.1.3 Business Auto Liability. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.
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14.01.5

Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 per claim. Such insurance will cover all Work performed by or on behalf of Contractor under this Agreement. Contractor warrants that any professional subcontractors used to perform scope under this agreement will maintain the same coverage as Contractor. Policies written on a claims-made basis will maintain the same retroactive date, if any, as in effect at the inception of this Agreement or will be effective prior to the inception date of this agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase and keep continuous coverage in force during the contract term with University. If a claims-made policy is cancelled, expires or is replaced during the contract term, Contractor agrees to purchase an *Extended Reporting Period Endorsement* effective for thirty-six (36) months after the expiration, cancellation or replacement of the policy in order to maintain continuous coverage throughout the contract period, and be effective thirty-six (36) months after the contract period, the expiration, cancellation or replacement of the policy. No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.

[Option: 11.1.6 Contractor's Employee Dishonesty Insurance will be endorsed with a Client's Property Endorsement (or equivalent) to protect the assets and property of University with limits of not less than _____ **[Option:** \$500,000] **[Option:** \$1,000,000] per claim. If Contractor has property of University in its care, custody or control away from University's premises, Contractor will provide bailee coverage for the replacement cost of the property. Contractor's Employee Dishonesty policy will name University as Loss Payee. **[Note: Limit amount should be adequate to cover University's exposure. Appropriate limit will depend on the subject matter of this Agreement.]**

[Note: If this Agreement poses potential risks related to data privacy, network or information security, please contact the UT System Office of Risk Management for guidance on relevant insurance requirements and seek review of the contract by the Institution's Information Security Officer.]

[Option] 11.1.8 Contractor will maintain Cyber Liability insurance with limits of not less than \$5,000,000 for each wrongful act, that provides coverage for:

- Liability for security or privacy breaches, including loss or unauthorized access to University Data, whether by Contractor or any of subcontractor or cloud service provider used by Contractor;
- Costs associated with a privacy breach, including consumer notification, customer support/crisis management, and costs of providing credit monitoring services;
- Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
- Costs of restoring, updating or replacing UT data; Privacy liability losses connected to network security, privacy, and media liability.

Certificates of Insurance and Additional Insured Endorsements reflecting applicable limits, sub-limits, self-insured retentions and deductibles will be provided to University upon request. Contractor will be responsible for any and all deductibles, self-insured retentions or waiting period requirements. If the Cyber Liability policy is written on a claims-made basis, the retroactive date should be prior to the commencement of this agreement/addendum. If the Cyber Liability policy is written on a claims-made basis and non-renewed at any time during and up until the project completion signing date, Contractor shall purchase an Extended Reporting Period for at least a two-year period. University “its subsidiaries” and The Board of Regents of the University of Texas System will be named as an additional insureds and University will be provided with a waiver of subrogation, both by endorsement to the required Cyber Liability policy. In addition, the Insured vs. Insured exclusion shall not apply to University “its subsidiaries” and The Board of Regents of the University of Texas System for a wrongful act of (Contractor).

[Note: If this Agreement involves construction on property owned by the Board of Regents of The University of Texas System, please contact the UT System Office of Risk Management for guidance and relevant insurance requirements.]

- 14.02 Contractor will deliver to University:
- 14.02.1 Evidence of insurance on a Texas Department of Insurance approved certificate form (Acord form is a Texas Department of Insurance pre-approved form) verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Work by Contractor under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days prior to each annual insurance policy renewal.
- 14.02.2 **All insurance policies** (with the exception of workers’ compensation, and employer’s liability and professional liability) will be endorsed and name The University of Texas System Board of Regents, The University of Texas System and The University of Texas Health Science Center at San Antonio as Additional Insureds for liability caused in whole or in part by Contractor’s acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.

- 14.02.3 Contractor hereby waives all rights of subrogation against The University of Texas System Board of Regents, The University of Texas System and The University of Texas Health Science Center at San Antonio. All insurance policies will be endorsed to provide a waiver of subrogation in favor of The University of Texas System Board of Regents, The University of Texas System and The University of Texas Health Science Center at San Antonio. No policy will be canceled until after thirty (30) days' unconditional written notice to University. Contractor will be required to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this Section 14.
- 14.02.4 Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by The University of Texas Health Science Center at San Antonio prior to the performance of any Work by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.
- 14.02.5 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following University contact:
- Name:
- Address:
- Facsimile Number:
- Email Address:
- 14.02.6 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University or the University of Texas System. Contractor's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by University in writing.
- 14.02.7 Professional Liability Insurance should be kept in force continuously during the contract term with University. Coverage written on a claims-made basis requires Administrator to purchase an *Extended Reporting Period Endorsement*, if policy expires, is canceled or replaced during the contract term, effective for thirty-six (36) months after the expiration, cancellation, or replacement of the policy.

ARTICLE 15 INDEMNITY

The Architect shall hold Owner, The University of Texas System, and the Regents, officers, agents and employees of both institutions harmless and free from any loss, damage or expense arising out of any occurrence relating to this Agreement or its performance and shall indemnify Owner and The University of Texas System, their Regents, officers, employees, customers, agents, successors and assigns against any damage or claim of any type arising from the negligent or intentional acts or omission of the Architect, its employees, agents and/or assigns.

ARTICLE 16
HISTORICALLY UNDERUTILIZED BUSINESSES

The Owner has adopted a policy on Utilization of Historically Underutilized Business ("Policy"), which is incorporated herein by reference. The Policy and its requirements can be found on the following website: <http://www.utsystem.edu/offices/historically-underutilized-business/hub-forms>

Architect, as a material provision of the Agreement, must comply with the requirements of the Policy and adhere to any HUB Subcontracting Plan submitted with Architect's Proposal. No changes to the HUB Subcontracting Plan can be made by the Architect without the prior written approval of the Owner in accordance with the Policy.

ARTICLE 17
MISCELLANEOUS PROVISIONS

17.01 **Appointment of Representative:** Owner may designate a representative to act partially or wholly for Owner in connection with this Agreement. Architect shall coordinate its services solely through the designated representative.

17.02 **Independent Contractor:** Architect acknowledges that it is engaged as an independent contractor and that Owner shall have no responsibility to provide Architect or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Architect is responsible for all income taxes required by applicable law.

17.03 **Confidentiality:** The Architect shall treat any Owner supplied information or information pertaining to Owner's business as confidential and shall not disclose any such information to others except as necessary for the performance of this Agreement or as authorized by the Owner in writing.

17.04 **Successors and Assigns.** The Owner and the Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the terms and conditions of this Agreement. This Agreement is a personal service contract for the services of Architect, and Architect's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without written consent of Owner. The benefits and burdens of this Agreement are, however, assignable by Owner.

17.05 **Subcontracting:** The Architect agrees not to subcontract any part of the work without the prior written consent of Owner. If subcontracting is permitted, the Architect must identify the subcontractor(s) to Owner prior to any subcontractor beginning work. Submission and approval of a Historically Underutilized Businesses (HUB) Sub Contractor Plan is considered consent under this Article.

17.06 **Loss of Funding:** Performance by Owner under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to Architect and Owner may terminate this Agreement without further duty or obligation hereunder. Architect acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.

17.07 **Open Records:** All information, documentation and other material submitted by the Architect may be subject to public disclosure under the Public Information Act, Texas Government Code Chapter 552.

17.08 **Family Code Child Support Certification:** Pursuant to Section 231.006, *Texas Family Code*, the Architect 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.

17.09 **Franchise Tax Certification:** 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 the corporation or limited liability company 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.

17.10 **Payment of Debt or Delinquency to the State:** Pursuant to Sections 2107.008 and 2252.093, *Texas Government Code*, Architect agrees that any payments owing to Architect 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

17.11 **Taxes:** The University of Texas System is a tax exempt State of Texas Agency under Chapter 151, Texas Tax Code and an institution of higher education. Architect shall avail itself of all tax exemptions applicable to Architect's work or expenses.

17.12 **Captions:** The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

17.13 **Severability:** Should any provisions(s) of this Agreement be held invalid or unenforceable in any respect, that provision shall not affect any other provisions and this Agreement shall be construed as if the invalid or unenforceable provision(s) had not been included.

17.14 **Waivers:** No delay or omission by either party in exercising any right or power provided under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver of the right or power. A written waiver granted by either of the parties of any provision of this Agreement shall not be construed as a future waiver of that provision or a waiver of any other provision of the Agreement.

17.15 **Force Majeure:** No party shall be liable or responsible to the other for any loss or damage or for any delays or failure to perform under this Agreement due to causes beyond its reasonable control, including, but not limited to, acts of God, employee strikes, epidemics, war, riots, flood, fire, sabotage, terrorist acts or any other circumstances of like character.

17.16 **Governing Law:** This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Texas without regard for choice of law principles. All obligations of the parties created hereunder are enforceable in Travis County, Texas.

17.17 **Entire Agreement:** This Agreement constitutes the sole and only agreement between the parties with respect to the services contracted for and supersedes any prior understandings, written or oral. No modification, alteration or waiver of this Agreement or any of its provisions shall be effective unless in writing and signed by both parties. No course of prior dealings, no usage of trade, and no course of performance shall be used to modify, supplement or explain any terms used in this Agreement.

17.18 **Ethics Matters/No Financial Interest:** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at **[Note: Insert University's web page where Policy is posted.] [Option (Include for UT System only.):** <http://www.utsystem.edu/policy/policies/int160.html>], University's Standards of Conduct Guide available at **[Note: Insert University's web page where Guide is posted.] [Option (Include for UT System only.):** <http://www.utsystem.edu/systemcompliance/>], and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

17.19 **179 D Benefit Allocation:** Owner may decide to seek the allocation of certain tax benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended, (the "Code") through this Agreement with Project Architect.

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

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

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

17.20 **Disclosure of Interested Parties:** By signature hereon, Architect certifies that, if the value of this agreement exceeds \$1 Million, it has complied with Section 2252.908 of the Texas Government Code and Part 1 Texas Administrative Code Sections 46.1 through 46.3 as implemented by the Texas Ethics Commission (TEC), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Architect.

17.21 **No Publication:** Architect will not make any press releases, public statements, or advertisement referring to this Agreement, or release any information relative to this Agreement or any project authorized under this Agreement for publication, advertisement or any other purpose, without the prior written approval of the Owner.

17.22 **Contractor Certification regarding Boycotting Israel.** To the extent required by Chapter 2270, *Texas Government Code*, Contractor certifies Contractor (1) does not currently boycott Israel; and (2) 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.

17.23 Contractor 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.

ARTICLE 18
NOTICES

18.1 All notices, consents, approvals, demands, requests or other binding communications under this Agreement shall be in writing. Written notice may delivered in person to the designated representative of the Architect or Owner; mailed by U. S. mail to the last known business address of the designated representative; or transmitted by fax machine to the last know business fax number of the designated representative. Mail notices are deemed effective three business days after the date of mailing. Fax notices are deemed effective the next business day after faxing.

18.2 The initially designated representatives of the parties for receipt of notices are as follows. Either party may change their designated representative for receipt of notices by written notice.

(1) If to Owner: _____

Fax: _____

(2) With Copies to: _____

Fax: _____

(3) If to Architect: _____

Fax: _____

IN WITNESS WHEREOF, Owner and Architect have executed and delivered this Agreement effective as of the date identified above.

OWNER:

ARCHITECT:

By: _____
Name:
Title:

By: _____
Name:
Title:

CONTENT APPROVED:

EXHIBITS

Exhibit A—Architect's Schedule of Billing Rates

REVISIONS

DATE	REVISED	INITIALS
6-19-13	Revised Insurance Requirements Sections 1.1.27-1.1.31	ems
8-20-13	Art. 17.12 (Eligibility Certification) Deleted; Art. 13 (Dispute Resolution) revised	ems
11/05/15	Art. 17.19 (179 D Allocation) added	ems
01/28/16	Art. 17.20 (Disclosure of Interested Parties) added	ems
04/19/17	Art. 14 (Insurance) replaced; Art. 16 (HUB) revised; Art. 17.21 (No Publication) added	ems
08/29/17	Art. 4.02 (Standard of Care) revised; Art. 17.22 Contractor Certification regarding Boycotting Israel. added; Art. 17.23 Contractor Certification regarding Business with Certain Countries and Organizations. added	ems
05/16/19	Art. 17.22 Contractor Certification regarding Boycotting Israel. opening phrase edited	ems