

AGREEMENT BETWEEN  
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO and  
PROJECT ARCHITECT for A PROJECT OF LIMITED SIZE OR SCOPE

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

The Owner:                   The University of Texas Health Science Center at San Antonio

and

The Architect:

for

The Project:

The Owner and the Architect agree as follows:

ARTICLE 1  
ARCHITECT'S SERVICES

Architect agrees to perform the services specifically described in Exhibit 1 and all other professional services reasonably inferable from Exhibit 1 and necessary for complete performance of Architect's obligations under this Agreement (collectively, "Architect's Services"). To the extent of any conflict between the terms in Exhibit 1 and this Agreement, the terms of this Agreement shall prevail.

ARTICLE 2  
ARCHITECT'S RESPONSIBILITIES

Architect agrees to use Architect's best efforts, skill, judgment, and abilities so as to perform Architect's Services in an expeditious and timely manner consistent with professional standards of care and the orderly progress of the Project. Architect shall at all times provide sufficient personnel to accomplish Architect's Services in a timely manner. Architect shall manage its services, administer the Project and coordinate other professional services as necessary for the complete performance of Architect's obligations under this Agreement.

Architect agrees 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.

Architect's Services shall be reasonably accurate and free from material errors or omissions. Architect shall promptly correct any known or discovered error, omission, or other defect in the plans, drawings, specifications, or other services provided by Architect without any additional cost or expense to Owner.

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 the Project and Owner. The designated representative shall not be changed without prior approval of the Owner, which approval shall not be unreasonably withheld.

The Project Architect shall carry such professional liability and errors and omissions insurance, covering the services provided under this Agreement, with a minimum limit of \$500,000 each claim and \$500,000 aggregate. The fees for such insurance will be at the expense of the Project Architect. Project Architect shall deliver a Certificate of Insurance indicating the expiration date, and existence, of the Project Architect's professional liability insurance before commencement or continuation of performance of the services under this Agreement.

### ARTICLE 3 THE OWNER'S RESPONSIBILITIES

The Owner shall provide the Architect with a full description of the requirements of the Project.

The Owner shall furnish surveys, geotechnical reports or other special investigations of the Project site as requested by the Architect and as reasonably necessary for the completion of Architect's Services. The Owner shall furnish structural, mechanical, chemical and other laboratory tests as reasonably required.

The Owner will review the Architect's drawings, specifications and other documents of service produced by Architect's in the performance of its obligations under this Agreement (collectively the "Design Documents") as required. Owner will notify Architect of any design fault or defect in Architect's Services or Design Documents of which Owner becomes aware.

The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Architect's Services.

The Owner designates \_\_\_\_\_ as its representative authorized to act in the Owner's behalf with respect to the Project.

### ARTICLE 4 OWNERSHIP AND USE OF DOCUMENTS

The Design Documents prepared by Architect as instruments of service are and shall remain the property of the Architect whether the Project for which they are created is executed or not. However, the Owner shall be permitted to retain copies, including reproducible copies, of the Design Documents for information and reference in connection with the Owner's use and occupancy of the Project. In addition, Owner shall have an irrevocable, paid-up, perpetual license and right, which shall survive the termination of this Agreement, to use the Design Documents and the ideas and designs contained in them for any purpose, with or without participation of the Architect.

ARTICLE 5  
DISPUTE RESOLUTION

5.1 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.

5.1.1 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.

5.1.2 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.

5.1.3 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.

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

5.1.5 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.

5.1.6 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 6  
PROJECT TERMINATION OR SUSPENSION

**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 and Project Architects recovery for termination shall be strictly limited to the compensation allowable under a termination for convenience.

**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.

**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 7  
MISCELLANEOUS PROVISIONS

Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between Architect and Owner and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

Assignment. 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.

Applicable Law. This Agreement shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without giving effect to principles of conflict of law.

Waiver. A delay or omission by either party in exercising any right or power under the Agreement shall not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement shall not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement.

Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination shall not affect any other provision of this Agreement which shall be interpreted as if the invalid or unenforceable provision had not been included.

Independent Contractor. Architect recognizes that Architect is engaged as an independent contractor and acknowledges that Owner shall have no responsibility to provide Architect or its employees with any benefits normally associated with employee status. Architect will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner.

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

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.

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

Proprietary Interests. All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Architect in the performance of services for Owner, which is not generally known to the public, shall be confidential and Architect shall not disclose any such confidential information, unless required by law. Architect shall not announce or advertise its engagement

by Owner in connection with the Project or publicly release any information regarding the Project without the prior written approval of Owner.

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: <http://www.utsystem.edu/policy/policies/int160.html>, University's Standards of Conduct Guide available at: <http://www.utsystem.edu/systemcompliance/>, and applicable state ethics laws and rules available at [www.utsystem.edu/ogc/ethics](http://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.

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.

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.

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).

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.

Disclosure of Interested Parties. By signature hereon, Project 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 Project Architect.

Notices. All notices referenced in this Agreement shall be provided in writing. Notices shall be deemed effective when delivered by hand delivery or on the third business day after the notice is deposited in the U.S. Mail. Facsimile notices are deemed effective on the first business day following the date the facsimile notice is received. Notices shall be sent to the following addresses:

**To Owner:**

Fax No.

With Copy to:

Fax No.

**To Architect:**

Fax No.

The parties may designate alternative persons or addresses for receipt of notices by written notice.

ARTICLE 8  
DIRECT SALARY EXPENSE

Direct Salary Expense (“DSE”) is defined as the actual salaries of the Architect’s personnel directly engaged on the Project, expressed on an hourly wage basis prior to deductions for employment taxes and employee-paid benefits. DSE shall not included the costs of mandatory and customary employer provided contributions and employee benefits, overhead expenses or profit relating to the Project. Any multiplier applied to the DSE shall be for the purpose of covering all employer provided contributions and employee benefits, overhead expenses, and profits.

Prior to commencing Architect’s Services, Architect shall identify all personnel who will be assigned to the Project along with their titles and DSE hourly wage.

ARTICLE 9  
REIMBURSABLE EXPENSES

Reimbursable Expenses are in addition to Compensation for Architect’s Services and include actual and reasonable expenses incurred by the Architect, its employees and its Architects solely and directly in connection with the performance of Architect’s Services for the following:

Expense of transportation (including coach class air travel) and living expenses in connection with out-of-state travel as directed and approved in advance by the Owner. Transportation and living expenses incurred within the State of Texas are not reimbursable unless expressly approved by the Owner in advance.

Fees paid for securing approval of authorities having jurisdiction over the Project.

Professional models and renderings if requested by the Owner.

Reproductions, printing, binding, collating and handling of reports, and drawings and specifications or other project-related work product, other than that used solely in-house for Architect and its Architects.

Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project.

Expense of any additional insurance coverage or limits, excluding professional liability and errors and omissions insurance, required under this Agreement or requested by the Owner that is in excess of that normally carried by the Architect and the Architect's Architects.

#### ARTICLE 10 ADDITIONAL SERVICES

Additional Services are services not included in the Architect's Services and not reasonably inferable from Architect's Services. Additional Services shall be provided only if authorized or confirmed in writing by the Owner. Prior to commencing any Additional Service, Architect shall prepare for acceptance by the Owner an Additional Services Proposal detailing the scope of the Additional Services and the proposed fee for those services. Architect shall proceed to perform Additional Services only after written acceptance of the Additional Services Proposal by Owner.

Upon acceptance by Owner, each Additional Services Proposal and the services performed by Architect pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement.

ARTICLE 11  
PAYMENTS TO ARCHITECT

Architect shall present monthly Applications for Payment to the Owner detailing the Architect's Services and approved Additional Services performed and the approved Reimbursable Expenses incurred for the Project in the previous month. With each application for payment, Architect shall submit payroll information, receipts, invoices and any other evidence of payment which Owner or its designated representatives shall deem necessary to support the amount requested.

Owner shall promptly review the Application for Payment and notify Architect whether the Application is approved or disapproved, in whole or in part. Owner shall promptly pay Architect for all approved services and expenses. For purposes of Texas Government Code § 2251.021(a)(2), the date performance of services is completed is the date when the Owner's representative approves the Application for Payment.

Owner shall have the right to withhold from payments due Architect such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Architect or failure of Architect to perform its obligations under this Agreement.

ARTICLE 12  
ARCHITECTS ACCOUNTING RECORDS

Records of Architect costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for three years after final Payment or abandonment of the Project, unless Owner otherwise instructs Architect in writing. Architect's records shall be kept on the basis of generally accepted accounting principles.

ARTICLE 13  
INSURANCE

For services performed on Owner's premises, the Service Provider shall furnish to Owner Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement.

Worker's Compensation	Statutory Limits
Employer's Liability	
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 policy limit
Bodily Injury by Disease	\$1,000,000 each employee
Commercial General Liability	\$1,000,000 each occurrence \$1,000,000 aggregate
Business Auto Liability	
Combined Single Limit	\$1,000,000 each occurrence
Worker's Compensation	Statutory Limits

Services Provider shall include the Owner as an additional insured on the General Liability policy, and the Worker's Compensation policy shall include a waiver of subrogation in favor of the Owner.



Required insurance shall not be cancelable without thirty (30) days' prior written notice to Owner.

Upon request the Service Provider shall furnish complete sets of its insurance policies to Owner for review.

ARTICLE 14  
INDEMNITY

The Services Provider 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 Services Provider, its employees, agents and/or assigns.

ARTICLE 15  
ARCHITECT'S COMPENSATION

The Architect's Compensation for Architect's Services shall be as described in Exhibit 1. The maximum fee for Architect's Services shall not exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

The Architect's Compensation for any approved Additional Services shall be as described in the Additional Services Proposal accepted by the Owner.

For Reimbursable Expenses approved by the Owner, a multiple of one and one-tenth (1.10) times the actual expense incurred by Architect, its employees or its Architects.

The Owner and Architect have entered into this Agreement as of the Effective Date.

OWNER:

ARCHITECT:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

CONTENT APPROVED:

\_\_\_\_\_

EXHIBITS