



UNIVERSITY HEALTH SYSTEM

BEXAR COUNTY HOSPITAL DISTRICT

d/b/a

UNIVERSITY HEALTH SYSTEM

4502 MEDICAL DRIVE

SAN ANTONIO, TEXAS 78229-4493

AGREEMENT BETWEEN OWNER AND ARCHITECT/ENGINEER UNIVERSITY HEALTH SYSTEM

[PROJECT NAME]

PURCHASE ORDER NO. _____

This Agreement is made and entered into on this _____ day of _____, 20____, by and between the **Bexar County Hospital District d/b/a University Health System**, (hereinafter referred to as “Owner”), and _____ **[FULL LEGAL NAME OF ARCHITECT/ENGINEER]** whose principal corporate headquarters are located at _____ **[FULL ADDRESS]** (hereinafter referred to as the “Architect/Engineer”).

RECITALS

WHEREAS, the Owner, after having reviewed the Architect/Engineer’s response to Owner’s Request for Qualifications, RFQ _____, dated _____, (hereinafter referred to as the “RFQ”), and after having evaluated the Architect/Engineer’s demonstrated competence and qualifications set forth therein, has determined that Architect/Engineer is the most highly qualified provider of the professional services required for the Project.

WHEREAS, Owner desires to contract with the Architect/Engineer for professional architectural and engineering services (“Services”) in connection with design and construction of the _____ (“the Project”); and

WHEREAS, Architect/Engineer is qualified and has agreed to provide the professional Services contemplated hereunder; and

WHEREAS, Architect/Engineer has agreed to provide such professional Services for the compensation provided herein;

NOW, THEREFORE, Owner and Architect/Engineer, in consideration of the terms, covenants and conditions herein contained, do hereby agree as follow:

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Exhibits to Agreement. This Agreement includes the following Exhibits, each of which are incorporated by reference as if fully stated herein:

[Exhibit A](#) - List Of Architect/Engineer's Approved Consultants;

[Exhibit B](#) - Detailed Scope of Basic Services;

[Exhibit C](#) - Architect/Engineer's Comprehensive Design Schedule;

[Exhibit D](#) - Schedule of Architect/Engineer's Fees;

[Exhibit E](#) - Schedule of Insurance.

ARTICLE I

DEFINITIONS

1.01 A capitalized word in this Agreement indicates that the word is defined in this Article or otherwise in this Agreement. Definitions are as follows:

- (a) Applicable Laws - means the laws, rules, regulations, codes, ordinances and restrictive covenants (whether federal, state or local) of any kind governing the development, approval, use or occupancy of the Project.
- (b) Architect/Engineer Agreement or A/E Agreement - means this contract and all of the Exhibits attached hereto and which are expressly identified herein to be incorporated as a part hereof, in addition to all amendments or supplements that may be mutually agreed upon by Owner and Architect/Engineer, and any Changes that may become effective in accordance with the provisions of this Contract, from time to time.
- (c) Architect/Engineer – **[NAME OF ARCHITECT/ENGINEER]** references to Architect/Engineer include Consultants.
- (d) Comprehensive Design Schedule - means the schedule setting forth the times for completion of design tasks, as described in [Article VI](#) (which shall not exceed the time permitted in [Article 3.02](#)).
- (e) Construction Cost Limitation – means the maximum amount of funding that has been authorized by and is available to Owner to pay for the construction of the Project, exclusive of: (i) furniture, fixtures and other equipment (FFE); (ii) the Owner's contingency; and (iii) all design and commissioning fees and reimbursable expenses.
- (f) Construction Documents - means the documents that will be issued by the Architect/Engineer and approved by the Owner, setting forth in detail the requirements for construction of the Project, including Drawings and Specifications that establish in detail the quality levels of materials and systems required for construction of the Project, as well as any compilation of all or a part of the Construction Documents that may be referred to as the Project Manual.
- (g) Consultants – means a firm or individual engineers, architects or other consultants approved by Owner who have an agreement directly with the Architect/Engineer to provide services related to this Project for the express benefit of Owner.
- (h) Contract Documents - means all the contract documents comprising the contract between the Owner and Prime Contractor, including, as applicable, the Owner's solicitation, addenda, notice(s) to bidders, Prime Contractor's Guaranteed Maximum Price, prevailing wage schedule, list of subcontractors, the Owner's notice to proceed, bonds, general provisions, special provisions, Specifications, Drawings, all modifications, all written amendments, change orders, field orders, orders for minor

changes in the work, and Architect/Engineer's written interpretations and clarifications issued on or after the effective date of such contract.

- (i) Cost Estimate – means the Architect/Engineer's estimate of the total cost, including the Work of all Trade Subcontractors, of the Prime Contractor's Work and services required for construction of the Project.
- (j) Day – means the calendar day unless otherwise specifically designated.
- (k) Drawings - means the graphic and pictorial portions of the Construction Documents, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
- (l) Final Completion - means that stage of completion by which all deficiencies in the Work have been presented to the Prime Contractor by the Owner, Architects/Engineer, the Texas Department of State Health Services, all Building Inspectors, and all other governmental authorities having jurisdiction, and all such deficiencies have been corrected, completed, or otherwise addressed to the satisfaction of the Owner, Architect/Engineer and such governmental authorities, as evidenced by the issuance of a certificate of final completion by the Architect/Engineer (signed by the Prime Contractor and Owner) and the issuance of a Final Certificate of Occupancy by the authority having jurisdiction.
- (m) General Requirements - means the requirements for the Work developed and issued by the Architect/Engineer, including those items under Construction Specifications Institute Division 1.
- (n) MEP – means mechanical, electrical and plumbing.
- (o) Owner - means the Bexar County Hospital District d/b/a the University Health System and its authorized representatives and successors in interest.
- (p) Prime Contract – means all the contract documents comprising the contract between the Owner and the Prime Contractor, including, as applicable, the Owner's solicitation, addenda, notice(s) to bidders, Prime Contractor's Guaranteed Maximum Price, prevailing wage schedule, list of subcontractors, the Owner's notice to proceed, bonds, general provisions, special provisions, Specifications, Drawings, all modifications, all written amendments, change orders, field orders, orders for minor changes in the work, and Architect/Engineer's written interpretations and clarifications issued on or after the effective date of such contract.
- (q) Prime Contractor – means a firm or individual performing Work to construct the Project under the Prime Contract with or for the benefit of the Owner.
- (r) Project - means the **LIST NAME OF PROJECT** Project for which the Services under this Contract are to be performed, as further defined in [Article II](#).

- (s) Project Coordinator – means **[LIST NAME OF INDIVIDUAL]**, who shall be the Owner’s designated individual responsible for project coordination. This individual shall be Owner’s representative authorized to act on Owner’s behalf, except to the extent governing body approval is necessary.
- (t) Project Manual - means the compilation of the General Requirements and the Specifications developed and issued by the Architect/Engineer for the Work.
- (u) Project Schedule - means the schedule or schedules approved by Owner for execution of the Work.
- (v) Specifications - means that portion of the Construction Documents consisting of the written technical requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services, including all requirements of applicable building and life safety codes.
- (w) Standard of Care – means the Architect/Engineer’s Standard of Care as defined in [Article 13.02](#), below.
- (x) Substantial Completion - means that stage of completion by which the Work, or an agreed upon portion of the Work, has been sufficiently completed in accordance with the requirements of the Construction Documents, and has been inspected and approved by the City Building Official for partial or temporary occupancy so that Owner may safely occupy and use the Project or a portion thereof for its intended purposes as evidenced by the issuance of a certificate of substantial completion by the Architect/Engineer (signed by the Prime Contractor and Owner), excluding portions of the Work that remain unfinished pending Final Completion and final inspection and approval by the City Building Officials.
- (y) Trade Subcontractor – means a firm or individual performing a portion of the Work who has a contract agreement directly with a Prime Contractor.
- (z) Work - means the construction and services, as distinguished from the Services required hereunder, to be required by the Contract Documents to be prepared hereunder, and includes all other labor, materials, equipment and services provided or to be provided by a Prime Contractor to fulfill the Prime Contractor’s obligations for construction of the Project for the Owner’s benefit.

ARTICLE II

PROJECT DESCRIPTION AND REQUIREMENTS

2.01 The Project involves all aspects of the Owner’s program for the University Health System **[LIST NAME OF PROJECT]** Project, which consists of the build-out of approximately **[LIST SQUARE FOOTAGE OF PROJECT]** Sq.Ft. of **[LIST AREA CLASSIFICATION FOR PROJECT, E.G., RADIOLOGY, NURSING, ADMINISTRATION]** space at **[LIST STREET ADDRESS]** in San Antonio, Texas,

including **[LIST MAJOR COMPONENTS OF PROJECT WITHIN AREA CLASIFICATION]**. The Architect/Engineer acknowledges and understands the Owner's project requirement that the Project be designed and constructed **[LIST ANY SPECIAL PROJECT REQUIREMENTS BEYOND TDSHS AND JOINT COMMISSION COMPLIANCE THAT UHS DESIRES FOR THE PROJECT, I.E., LEED CERTIFICATION, BUILDING INFORMATION MODELING, OR COMPLIANCE WITH OTHER NON-MANDATORY STANDARDS]**.

- 2.02 The Owner's Board of Managers has established a Construction Cost Limitation of **[LIST PROJECT BUDGET]** Dollars, which Construction Cost Limitation can not be exceeded by Prime Contractor or increased by Owner without formal Board approval, and for which Architect/Engineer makes an express representation of its ability and acknowledges a duty to provide a design that will enable the Project to be constructed as set forth above in Article 2.01 above, for a total cost that is within such Construction Cost Limitation.

ARTICLE III

TERM AND TIME FOR COMPLETION

- 3.01 Unless sooner terminated in accordance with [Article VIII](#), or extended by mutual agreement approved by Owner, the term of this Agreement shall be from the date of signature on the contract through final completion of all services described herein and finalization of the Project and resolution of any outstanding project-related claims or disputes.
- 3.02 The Architect/Engineer shall complete all services described in [Articles 6.01, 6.02, 6.03 and 6.04](#) within **[LIST TIME CONSTRAINTS TO COMPLETE DESIGN]** days from the date of signature on the contract. The time for performance of any Additional Services shall be addressed via a separate written document, which shall serve to amend this document.
- 3.03 Time being of the essence, the Architect/Engineer shall perform basic and additional services as expeditiously as is consistent with the Standard of Care and the orderly progress of the Work. The Architect/Engineer shall complete the documents in accordance with the schedules provided herein.
- 3.04 Within 10 days of execution hereof, Architect/Engineer shall prepare and submit to Owner a Comprehensive Design Schedule (attached hereto as [Exhibit C](#)) complying with the Architect/Engineer's time for performance set forth in Article 3.02 above. Such Schedule shall allow Owner sufficient time to review and approve Architect/Engineer's documents at each design phase described in [Article VI](#). Architect/Engineer agrees to complete its services in accordance with the Comprehensive Design Schedule, and understands that failure to do so constitutes a material breach of this Agreement.

ARTICLE IV

RELATIONSHIP OF THE PARTIES

- 4.01 The Architect/Engineer accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner throughout each phase of the Project and to exercise the Architect/Engineer's skill and judgment in furthering the interests of the Owner. The Architect/Engineer represents that it possesses the requisite skill, expertise, and licensing to perform the required services. The Architect/Engineer acknowledges and accepts a duty of good faith and fair dealing toward the Owner, taking such actions as are reasonably necessary to perform its Services under this Agreement in a timely, efficient and economical manner. The Architect/Engineer shall endeavor to promote harmony and cooperation among all Project participants.
- 4.02 In performing the Services, Architect/Engineer shall operate as and have the status of an independent contractor and shall not act as or be an agent or employee of Owner. Neither the Architect/Engineer nor any of its personnel or Consultants shall act on behalf of or in the name of the Owner except as provided in this Agreement or unless expressly authorized in writing by the Owner.
- 4.03 The Architect/Engineer shall perform its obligations with integrity and agrees that all conflicts of interest shall be avoided or disclosed promptly to the Owner.
- 4.04 The Architect/Engineer warrants that it has not and shall not pay nor receive any contingent fees or gratuities to or from any person to secure preferential treatment in connection with the procurement of Architect/Engineer's Services hereunder.

ARTICLE V

ARCHITECT/ENGINEER'S SERVICES, GENERALLY

- 5.01 **General Scope of Services.** The Architect/Engineer shall, in providing the Services, adhere to and exercise the Standard of Care to support the successful execution of the Project, regardless of whether expressly described herein, in accordance with the Owner's requirements, as outlined herein and in the Owner's RFQ. The architectural and engineering services shall include Basic Services plus Additional Services as may be authorized by the Owner.
- 5.02 **Basic Services, Generally.** The Architect/Engineer's basic services shall include but not be limited to architectural, civil, structural, mechanical, electrical, plumbing, fire protection, information systems, security, cost estimating, construction administration, and the coordination of all Owner-furnished items and equipment with all documents produced by the Architect/Engineer and the Prime Contractor for the Project. All Consultants shall be as listed in [Exhibit A](#). No Consultant shall be engaged by Architect/Engineer without the express prior written approval of Owner. Any agreement to engage the services of Consultant shall expressly recognize the Owner as a third party beneficiary thereof. After

execution of this Agreement no change in Consultants shall be made without written approval of the Owner. Refer to [Exhibit B](#) for a more detailed description of the Services required. In the event of a conflict between any Article in this Agreement and [Exhibit B](#), the provision that provides greater value to the Owner or imposes a more stringent requirement of the Architect/Engineer shall control.

- 5.03 **Site Evaluation and Document Review.** The Architect/Engineer and its Consultants shall conduct a thorough evaluation of the Project site and perform an exhaustive review of all Owner's drawings, specifications, and other documents containing architectural and engineering information related to the Project, in order to determine: (i) the existing Project site conditions; (ii) the locations and/or suitability of reuse of all existing and impacted components, systems, and elements of infrastructure; and (iii) the feasibility of the Owner's planned improvements at the Project site, including an assessment of the site constraints impacting implementation of the Architect/Engineer's designs to effectuate such improvements.
- (a) Architect/Engineer and its Consultants shall perform an analysis of existing MEP systems to determine whether upgrades to such systems are necessary and/or advisable as a result of: (i) code deficiencies of any kind or nature; (ii) the poor condition or improper functioning of such systems; or (iii) the implementation of Architect/Engineer's designs required to achieve Owner's planned improvements for the Project.
- 5.04 **Communication with Project Coordinator.** The Architect/Engineer shall have an affirmative duty to keep the Project Coordinator informed of the Architect/Engineer's progress, design decisions, design concepts, documents and Cost Estimates through bi-weekly briefings of the Project Coordinator, or at any time during normal business hours Owner reasonably requests such a briefing.
- 5.05 **Revisions to Documents.** The Architect/Engineer shall not proceed with the development of successive design documents until receiving written authorization from the Project Coordinator. The Architect/Engineer shall promptly, and without causing delay to the Comprehensive Design Schedule or the Project Schedule, resolve and/or revise without additional compensation:
- (a) Those documents which have not been previously approved by the Project Coordinator, and to which the Owner has reasonable objections;
- (b) Those documents containing constructability problems, as identified by Project Coordinator and/or Prime Contractor;
- (c) Those documents prepared by the Architect/Engineer requiring revisions necessary to meet the Construction Cost Limitation or to conform to value engineering initiatives, including budget management alternates as requested by the Owner; and

- (d) Those documents requiring revision as a result of reviews from authorities having jurisdiction.
- 5.06 **Compliance with Applicable Laws.** The Architect/Engineer shall prepare the Contract Documents in accordance with the Applicable Laws, regulations, ordinances, and codes including any other federal, state, municipal government and the Joint Commission (formerly known as the Joint Commission on Accreditation of Health Organizations or JCAHO) requirements.
- 5.07 **Energy Surveys.** The Architect/Engineer shall complete any energy surveys requested by the Owner or required by any governmental authority having jurisdiction over the Project.
- 5.08 **Submittal of Documents to Governing Authorities.** The Architect/Engineer shall prepare documents required, make filings and obtain on the Owner's behalf all approvals of governmental authorities having jurisdiction over the Project, including permits necessary to enable the Prime Contractor to pay for and obtain the building permit for construction of the Project. The Architect/Engineer, and all appropriate personnel of Architect/Engineer, shall attend, and schedule if necessary, all meetings with governmental authorities having jurisdiction as necessary to obtain all required permits and approvals.
- (a) The Architect/Engineer shall submit, as required, the Contract Documents, including proof of compliance with the adopted energy code, at various stages of completion to all governmental and other authorities having jurisdiction over the Project and from whom approval is required. The Architect/Engineer shall also submit Contract Documents to any other agency, utility company or entity whose approval of the Project will be required as a condition of furnishing needed services to the Project. The Owner will pay the Texas Department of State Health Services and the Texas Department of Licensing and Regulation for costs related to their plan reviews and/or inspections and all other permitting and regulatory fees shall be paid by the Prime Contractor. Project Coordinator will inform Architect/Engineer of the Texas Department of Licensing and Regulation registered accessibility specialists that are to receive the drawings and specifications.
- (b) The Architect/Engineer shall make any necessary changes for such approvals at no additional cost to the Owner.
- (c) Appropriate documentation describing this Project will be submitted to the Texas Department of State Health Services for determination as to whether or not this Project is required to be reviewed. Architect/Engineer will coordinate this submittal through the Project Coordinator.
- 5.09 **Documents, Generally.**
- (a) All plans and drawings will be prepared using computer aided drafting software (compatible with Owner's software) and submitted by Architect/Engineer to Owner

for approval in a format acceptable to the Owner. Plans and drawings are to be prepared to be clearly legible at full and half size reproduction.

- (b) Architect/Engineer shall be liable to Owner for any loss or damage to any of Owner's original documents provided to Architect/Engineer while they are in the possession of or while being worked upon by the Architect/Engineer or anyone connected with Architect/Engineer, including agents, employees, consultants or subcontractors. All documents damaged shall be replaced or restored by Architect/Engineer without cost to Owner within seven (7) days.
- (c) Upon completion of the Work, Architect/Engineer shall, within thirty (30) calendar days following receipt from Prime Contractor of record drawings (otherwise known as "As-Builts"), deliver to Owner one full set of reproducible and electronic record drawings and specifications in a format acceptable to Owner that accurately depict the final construction of the Project.

5.10 **Additional Services.** The following services are not included in basic services unless otherwise identified as such. The services shall be provided by the Architect/Engineer if authorized in writing by the Owner, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for basic services.

- (a) Providing consultation concerning replacement of any Work damaged by fire or other cause during construction and furnishing services as may be required in connection with the replacement of such Work.
- (b) Providing services made necessary by the default of the Prime Contractor unless caused by Architect/Engineer's error or omission.
- (c) Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project in which the Architect/Engineer is not a party.
- (d) Investigation of sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.
- (e) Consultations, negotiations, and documentation supporting the procurement of Project financing.
- (f) Surveys, site evaluations, legal descriptions and aerial photographs.
- (g) Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.

- (h) Hand-made artistic renderings, physical models and physical mockups of the Project or any part of the Project.
- (i) Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss.
- (j) Services for tenant or rental spaces not a part of this Agreement.
- (k) Any other services the Parties agree in writing are Additional Services.

ARTICLE VI

DESIGN PHASE

- 6.01 **Programming Phase.** The Architect/Engineer shall define the Project and describe the functional and space requirements for the Project by developing a series of preliminary design alternatives for the Owner's approval. The preliminary design effort shall take into consideration surveys and analyses of the existing conditions and the requirements of the Project, and other relevant data, as approved by Owner. The Architect/Engineer shall review the project budget prepared by the Owner and shall develop an initial Cost Estimate to be submitted to Owner simultaneously with the submission of the Programming Documents. After all necessary coordination with the Owner, the Architect/Engineer shall prepare the final Programming Documents (including a written narrative describing the Architect/Engineer's basis of design and assumptions), defining the scale and relationship of the Project components, all of which shall be issued in the form acceptable to the Project Coordinator, for the Owner's review and approval, as more particularly described in [Exhibit B](#).
- 6.02 **Schematic Design Phase.** Based upon the Owner-approved Programming Documents and approved Cost Estimate, including any Owner-approved refinements or clarifications, the Architect/Engineer shall prepare, for the Owner's review and approval, Schematic Design documents consisting of drawings, outline specifications and other documents illustrating the Project's basic elements, scale, and their relationship to the Worksite. Schematic Design documents shall include, as applicable, conceptual plans of the site and structures; preliminary sections and elevations; structural and MEP plans and one-line diagrams, sketches, approximate areas, volumes and dimensions; and preliminary selections of materials and systems. After all necessary coordination with the Owner, the Architect/Engineer shall prepare the final Schematic Design documents, illustrating the scale and relationship of the Project components, all of which shall be issued in a form acceptable to the Project Coordinator, for the Owner's review and approval, as more particularly described in [Exhibit B](#).
- (a) The Architect/Engineer shall update the Cost Estimate developed from the Programming phase, submit such updated Cost Estimate to the Owner, and review the Cost Estimate with the Owner to assist in analyzing any changes to the estimated

construction cost established by the Cost Estimate submitted in the Programming phase.

- (b) When the Architect/Engineer submits the Schematic Design documents, the Architect/Engineer shall identify in writing for the Owner's approval (i) all material changes and deviations that have occurred following the most recently approved Programming Document, and (ii) any impact on the Project Schedule and Construction Cost Limitation of which the Architect/Engineer is or should be aware.

6.03 Design Development Phase. Based on the Schematic Design documents previously approved by Owner, and the approved Cost Estimate, including any Owner-approved refinements or clarifications, the Architect/Engineer shall prepare for the Owner's review and approval, Design Development documents. The Design Development documents shall further define the Project, including Drawings and outline Specifications fixing and describing the Project size, character and site relationships, and other appropriate elements describing the civil, structural, architectural, and MEP systems. Design Development documents shall include, as applicable, plans, sections and elevations; criteria and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; materials selections, general quality levels and any other drawings and narratives to describe the intent of the design. After all necessary coordination with the Owner, the Architect/Engineer shall prepare, the final Design Development documents, illustrating the scale and relationship of the Project components all of which shall be issued in a form acceptable to the Project Coordinator, for the Owner's review and approval, as more particularly described in [Exhibit B](#).

- (a) The Architect/Engineer shall update the Cost Estimate developed from the Schematic Design phase, submit it to the Owner, and review it with the Owner to assist in analyzing any changes to the estimated construction cost established by the Cost Estimate submitted in the Schematic Design phase.
- (b) When the Architect/Engineer submits the Design Development documents, the Architect/Engineer shall identify in writing for the Owner's approval (i) all material changes and deviations that have occurred following the most recently approved Schematic Design documents, (ii) any deviations from the Programming documents, and (iii) any impact on the Project Schedule and Construction Cost Limitation which the Architect/Engineer is or should be aware.

6.04 Construction Documents Phase. Based on the Design Development documents previously approved by the Owner and the most recently approved Cost Estimate, including any Owner-approved refinements or clarifications, the Architect/Engineer shall prepare Construction Documents setting forth in detail the quality levels of and the requirements for construction of the Project, and consisting of drawings and specifications that comply with Applicable Laws enacted at the time of their preparation at the location of the Project. After all necessary coordination with the Owner and Project Manager, the Architect/Engineer shall prepare, the final Construction Documents, illustrating the scale and relationship of the

Project components all of which shall be issued in a form acceptable to the Project Coordinator, for the Owner's review and approval, and the approval of governmental authorities. Refer to [Exhibit B](#) for additional information and requirements related to this phase of Services.

- (a) The Architect/Engineer shall update the Cost Estimate developed from the Design Development phase, submit such updated estimate to the Owner, and review the estimate with the Owner to assist in analyzing any changes to the estimated construction cost established by the Cost Estimate submitted in the Design Development phase.
- (b) The Architect/Engineer shall submit the Construction Documents in a form acceptable to Owner. The Architect/Engineer shall identify in writing for the Owner's approval (i) all material changes and deviations that have occurred following the most recently approved Design Development documents, and (ii) any impact on the Project Schedule and Construction Cost Limitation of which the Architect/Engineer is or should be aware. The Construction Documents shall completely describe all Work necessary to obtain permits and bids for, and to construct, the Project.
- (c) The Architect/Engineer, if requested by the Owner, shall prepare the Construction Documents in such order as to permit the Owner to award portions of the Project under separate construction contracts.
- (d) The Architect/Engineer shall assist the Owner to prepare the necessary bidding information, including all documents necessary for bidding or negotiating a construction contract between Owner and Prime Contractor for the Project, and, if requested by Owner, any Special Conditions of the construction contract.

6.05 Permitting/Bidding Phase. Following the Owner's acceptance of the Construction Documents and the Architect/Engineer's submission of such Construction Documents for approval by the appropriate governmental authorities as set forth in Article 6.04 above, the Architect/Engineer shall make any revisions necessary to the Construction Documents to secure the required permits and approvals from such governmental authorities. Concurrently, Architect/Engineer shall assist the Owner in obtaining construction bids and shall assist in awarding contracts for construction. The Architect/Engineer shall also assist in providing responses to any requests for information submitted by potential contractors/bidders within Owner's established time constraints. Upon receipt of all permits and approvals necessary for the commencement of the Work, the Architect/Engineer will issue a final set of Construction Documents. This phase shall not be considered complete until Architect/Engineer has obtained on behalf of Owner all permits and governmental approvals necessary for commencement of the Work at the Project site. Refer to [Exhibit B](#) for additional information and requirements related to this phase of Services.

ARTICLE VII

CONSTRUCTION PHASE

7.01 **Administration of Work, Generally.** The Construction Phase will commence when the Owner has executed the Prime Contract for construction and a Notice to Proceed has been issued to the Prime Contractor. The Architect/Engineer's services for this phase shall include the following as more fully described in [Exhibit B](#).

- (a) The Architect/Engineer shall have reasonable access to the Work area whenever it is in preparation or progress. Architect/Engineer shall notify the Project Coordinator at least 24 hours in advance of all site visits.
- (b) The Architect/Engineer and the Structural, Mechanical, Electrical and Consultants shall visit the site on a monthly basis (which times should be reflected in the Project Schedule), or when requested to do so by the Owner or the Architect/Engineer, to become generally familiar with the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Architect/Engineer shall keep the Owner informed of the progress on a weekly basis and quality of the Work and shall endeavor to guard the Owner against defect and deficiencies in the Work of the Prime Contractor. The Architect/Engineer and Consultants shall schedule site visits to coincide with the Prime Contractor's job progress meetings whenever possible.
- (c) The Architect/Engineer shall attend (on-site or via teleconference) regular construction meetings with the Owner and Prime Contractor.
- (d) Within five (5) days after each site visit the Architect/Engineer and Consultants shall furnish to the Owner a report of their observations on a form furnished by the Owner or otherwise approved by the Owner.
- (e) The Architect/Engineer shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures; or for safety precautions and programs in connection with the Work; or for the acts or omissions of the Prime Contractors, subcontractors or any other persons performing any of the Work; or for the failure of any of them to carry out the Work; or for the failure of any of them to carry out the Work in accordance with the Contract Documents. This provision is not intended to diminish in any way the duties and obligations of Architect/Engineer in overseeing the Work as otherwise provided herein.

7.02 **Shop Drawings, Sketches.**

- (a) The Architect/Engineer shall review and approve or take other appropriate actions upon shop drawings, product data, submittals and samples and other submissions of the Prime Contractor, but only for conformance with the design concept of the

Project and for compliance with the Contract Documents. The Architect/Engineer shall recommend to the Owner any additional laboratory testing required to ensure performance of proposed substitutions. Such action shall be taken by the Architect/Engineer within three (3) days following receipt of data so as to cause no delay in the progress of the Work. The Architect/Engineer's approval of a specific item shall not indicate approval of any assembly of which the item is a component.

- (b) The Architect/Engineer shall, when required for the proper clarification of the Contract Documents, prepare appropriate drawings at no additional cost to Owner.

7.03 **Certificates of Payment.**

- (a) The Architect/Engineer and Consultants shall determine the amounts owing to the Prime Contractor based on observations at the site and on evaluation of the Prime Contractor's Application for Payment, and shall issue Certificates for Payment in such amounts as provided in the Contract Documents. If approved, the Architect/Engineer shall issue the Certificate for Payment within three (3) days following receipt of the Prime Contractor's Application for Payment with complete information to the Project Coordinator.
- (b) The issuance of a Certificate for Payment shall constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's observation at the site as provided herein and on the data comprising the Prime Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the Architect/Engineer's knowledge, information and belief, the quality of Work is in accordance with the Contract Documents (subject to the results of any subsequent tests required by or performed under the Contract Documents; to minor deviations from the Contract Documents correctable prior to completion; and to any specific qualifications stated in the Certificate For Payment); and that the Prime Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect/Engineer had made any examination to ascertain how and for what purpose the Prime Contractor has used the monies. The Architect/Engineer shall, however, require that the Prime Contractor certify on each Application for Payment that the Work has been completed in accordance with the Contract Documents and that all amounts have been paid by him to applicable subcontractors for the Work for which previous Certificates For Payment were issued and payments received from the Owner.
- (c) The Architect/Engineer shall notify the Owner whenever the Architect/Engineer foresees a change or delay in the Project Schedule. At the review of each Prime Contractor Application For Payment, the Architect/Engineer shall confirm the schedule and assist in bringing the Work back on schedule.

7.04 Interpretations and Rejection of Work.

- (a) The Architect/Engineer shall be the interpreter of the requirements of the Contract Documents and the Project Coordinator shall be the judge of the performance thereunder by the Prime Contractor, in consultation with the Architect/Engineer. The Architect/Engineer shall render interpretations necessary for the proper execution and progress of the Work within five (5) days following the request of either the Owner or the Prime Contractor, and shall render written interpretation, within seven (7) days, on all claims, disputes and other matters in question between the Owner and the Prime Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents. The Architect/Engineer shall, when performing services under this subparagraph, obtain the Owner's approval of any interpretation or decision that may affect the scope of the Work, the project budget or the Project Schedule and time of completion. The Owner shall render any such approval or disapproval promptly to avoid any delay in the progress of the Work.
- (b) Interpretations of the Architect/Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing and/or otherwise in the form of drawings.
- (c) The Architect/Engineer shall have authority with Owner's approval to reject Work of the Prime Contractor which does not conform to the Contract Documents. Whenever, in the Architect/Engineer's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect/Engineer shall advise the Owner so that the Owner may require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, to determine whether or not such Work can then be fabricated, installed or completed. If the inspection or testing will result in additional cost to Owner, Owner must authorize the inspection or testing prior to the cost being incurred. The Architect/Engineer's authority to reject defective Work or nonconforming Work should be addressed in the Contract Documents and the Architect/Engineer shall not require special inspection or testing which may change the project budget or Project Schedule without the Owner's prior approval.

7.05 Change Orders and Requested Changes to Construction Contract.

- (a) The Architect/Engineer shall provide sketches and narrative descriptions of proposed changes and change orders (exclusive of changes of a major scope) within five (5) days after requested by the Owner.
- (b) The Architect/Engineer shall review and comment on Prime Contractor cost quotations for all proposed changes within five (5) days following receipt of such information from the Prime Contractor.

- (c) The Architect/Engineer shall prepare change orders within three (3) days following authorization by the Owner.

7.06 **Project Finalization.**

- (a) The Architect/Engineer shall conduct final check list and site visits and inspections to determine the date of Substantial Completion and Final Completion; and shall receive and forward to the Owner for the Owner's review, written warranties and related documents required by the Contract Documents and assembled by the Prime Contractor.
- (b) During the final check list and site visits for consideration of Final Completion, the Architect/Engineer shall prepare a list of all items requiring correction, modification or completion and deliver same to the Prime Contractor and the Owner within three (3) days of the site visit.
- (c) The Architect/Engineer shall review a set of record drawings provided by the Prime Contractor and a copy of the specifications showing significant changes in the Project made during construction, and develop "As-Built" drawings based on such record drawings. These "As-Built" shall be based on marked-up prints, drawings and other data furnished by the Prime Contractor to the Architect/Engineer, which will not be independently verified by the Architect/Engineer. All change orders, sketches, narrative description, clarification drawings, addenda items and any other such information produced during the execution of the Work shall also be included by the Prime Contractor on the record drawings and specifications, and incorporated into the "As-Built" drawings by the Architect/Engineer. Re-printing of this information and attachment to the record drawings is not acceptable. The Architect/Engineer shall deliver an electronic copy of "As-Built" Construction Documents (computer aided drafting files specifications and work processing files, etc.) on disk to the Owner within thirty (30) days after receipt of the marked-up prints from the Prime Contractor. Electronic files shall be compatible with Owner's software.
- (d) The Architect/Engineer shall complete the Statement of Construction and Fire Protection on the Work as required by the Joint Commission and submit to the Owner within thirty (30) days after Final Completion.
- (e) The Architect/Engineer shall, after final completion and occupancy, but within the sixty (60) day period prior to the expiration of the warranty period, conduct a follow up site visit of the Project in the presence of the Project Coordinator. The Architect/Engineer shall prepare a written report to the Owner detailing any deficiencies observed in the portions of the Work covered by such warranties.

ARTICLE VIII
TERMINATION, SUSPENSION AND DEFAULT

- 8.01 Owner may at any time order the Architect/Engineer to suspend its services on the Project for the convenience of the Owner. Any such suspension shall not terminate or void this Agreement. Owner shall have the right at any time and for any reason to terminate for convenience this Contract and any one or more tasks, in whole or in part, by giving written notice to Architect/Engineer. Upon receipt of Owner's order or notice, Architect/Engineer shall immediately discontinue services as directed therein, except as expressly directed otherwise therein. Architect/Engineer shall thereafter do only such services and work as may be necessary to preserve and protect work already completed. In case of such termination, Architect/Engineer shall be entitled to payment only for services and work satisfactorily performed prior to termination and reasonably performed thereafter in closing out any task in accordance with such notice. The foregoing shall be the sole remedy available to Architect/Engineer in the event of termination by Owner. In no event shall Architect/Engineer be entitled to payment of lost profits, lost opportunity or any damages relating to services not performed due to termination. Owner's right to terminate as provided herein shall not be construed as affecting in any way the rights, duties or obligations of the parties should Owner terminate this Contract upon Architect/Engineer's breach or default.
- 8.02 In the event of any termination of this Contract by Owner, in whole or in part, Architect/Engineer consents to Owner's selection of another to serve as the Architect/Engineer of the Owner's choice to assist the Owner in completing the Project. Upon termination for any reason whatsoever, however, Architect/Engineer shall promptly deliver to Owner all information, including all electronic documents, in Architect/Engineer's possession relating to the Program and the Project. Architect/Engineer further agrees to cooperate and provide any further information requested by the Owner in connection with the completion of the Architect/Engineer's obligations with respect to the Program and the Project.
- 8.03 Nothing contained in Article 8.02 above or this Article 8.03 shall require the Owner to pay for any services or work under the terms of this Agreement which is unsatisfactory or which is not submitted in compliance with the terms of this Agreement. The Owner shall not be required to make any payments to the Architect/Engineer when the Architect/Engineer is in default under this Agreement, nor shall this Article constitute a waiver of any right, at law and at equity, which the Owner may have if the Architect/Engineer is in default, including the right to bring legal action for damages or to enforce specific performance of this Agreement.

ARTICLE IX
THE OWNER'S RESPONSIBILITY

- 9.01 The Owner shall provide full information, regarding his requirements for the Project and

information on all Owner-furnished equipment items.

- 9.02 The Owner's Project Coordinator is authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Project Coordinator shall examine the documents submitted by the Architect/Engineer and shall promptly render decisions thereto to avoid unreasonable delay in the progress of the Architect/Engineer's Services.

ARTICLE X

COMPLETION AND ACCEPTANCE, EXCUSABLE DELAYS

- 10.01 **Completion and Acceptance.** When Architect/Engineer has completed a Basic Service or an Additional Service, or any separable portion thereof, Architect/Engineer shall so inform Owner in writing, and it shall be considered complete when accepted by Owner, such acceptance not to be unreasonably withheld. Upon receipt of Owner's notice of rejection of the service or services, Architect/Engineer shall remedy such matters in accordance with this Agreement and the above procedure shall be repeated. Payment, including final payment for any services shall not be deemed an acceptance of any services, or a release of Architect/Engineer's warranty obligations with respect thereto, if subsequently determined by Owner not to be in accordance with this Agreement.
- 10.02 **Excusable Delays.** Delays due to any circumstances that are beyond a Party's reasonable control to avoid or mitigate, including, but not limited to, strikes, riots, wars, fires, flood, explosion, acts of nature, acts of government, and labor disturbances shall constitute Excusable Delays. Architect/Engineer shall keep Owner advised of any delay, whether or not it constitutes an Excusable Delay, which may affect the Comprehensive Design Schedule or any scheduled date of completion. The Parties shall have no liability to each other for, and each party shall bear its own costs due to the impact of, Excusable Delays in the performance of their respective obligations under this Agreement; provided, however, Architect/Engineer shall receive an equitable adjustment to the Comprehensive Design Schedule to allow such additional time as may reasonably be required as the result of Excusable Delay to complete the affected services; and provided further, however, Architect/Engineer shall be entitled to an equitable adjustment to Architect/Engineer's fee as a result of delay occurring after Owner's receipt of Architect/Engineer's written notice advising Owner of the risk of delay and stating in detail any and all actions reasonably required of Owner to reasonably and appropriately avoid the same, but only to the extent that such delay would not have occurred but for Owner's failure to take reasonable and appropriate action to prevent such delay as described in such notice.
- 10.03 **Delays by Architect/Engineer.** The Architect/Engineer shall notify the Owner whenever the Architect/Engineer foresees a delay in the Comprehensive Design Schedule, and avoid or mitigate any such anticipated delay by accelerating its production schedule and increasing the number of personnel working on the Project. If the progress or completion of the Project is delayed by reason of any error, inconsistency or omission of the Architect/Engineer which violates the Standard of Care, the Architect/Engineer shall compensate the Owner for and

indemnify it against all damages which may accrue as a result of such delay. In addition, the Architect/Engineer shall provide services at its own cost, including any overtime costs and expenses, required to make up time lost to the Owner because of such delay. The Owner shall provide written notice to the Architect/Engineer of such delay after the Owner first recognizes the delay.

ARTICLE XI

PAYMENTS TO THE ARCHITECT/ENGINEER

11.01 Payments On Account of Basic Services.

- (a) The Owner shall pay to the Architect/Engineer for basic services properly performed under this Agreement a fixed fee of \$_____ (the services listed are at fixed fees and are not to be tied to any percentage of actual construction cost, or Prime Contractor's bid proposal), in accordance with the schedule below,

(Check box below if Exhibit D is utilized)

☐ and as further described in the Schedule of Architect/Engineer's Fees ([Exhibit D](#)):

	<u>Phase/Service Amount</u>	<u>Cumulative Amount</u>
Programming Phase	\$.00	\$.00
Schematic Design Phase	\$.00	\$.00
Design Development Phase	\$.00	\$.00
Construction Documents Phase	\$.00	\$.00
Permitting/Bidding Phase	\$.00	\$.00
Construction Administration Phase	\$.00	\$.00

- (b) The compensation during the Construction Phase shall be payable to the Architect/Engineer once services or portions thereof are complete. Payment for Construction Phase services shall be based on the percentage of Work completed as evidenced by the approved Prime Contractor's Application and Certificate for Payment.
- (c) Ten percent of each amount as shown in the above-schedule will be retained by the

Owner for a period of thirty (30) days from date of completion including completion of record drawings and specifications (whichever is later), for the purposes of insuring completion of the Architect/Engineer's services and providing coverage for additional costs incurred by the Owner arising from errors and omissions not otherwise covered by insurance. The exercise of any rights of Owner pursuant to this provision shall not waive the right to pursue any other right or recovery (such as, without limitation, any insurance coverage).

- (d) Architect/Engineer's invoices to Owner shall provide complete information and documentation to substantiate Architect/Engineer's charges. All payments to Architect/Engineer shall be made on the basis of the invoices submitted by Architect/Engineer and approved by Project Coordinator. Project Coordinator shall either approve or reject the invoice submitted by Architect/Engineer within ten (10) days of receipt. Such invoices shall conform to the schedule of services and costs in connection therewith as set out above.
- (e) If any Work designed or specified by Architect/Engineer during any phase is cancelled or suspended, in whole or in part, Architect/Engineer is to be paid for the services properly performed prior to receipt of written notice of such cancellation or suspension by the Owner.

11.02 Right to Withhold Payment.

- (a) Notwithstanding anything in this Agreement to the contrary, Owner shall not be obligated to make, and may withhold interest free, any payment to Architect/Engineer under this Agreement if any one or more of the following three (3) conditions exist:
 - (1) Architect/Engineer is in default of any of its obligations under this Contract, and fails to correct such default within seventy-two (72) hours after receiving Owner's written notice of such default;
 - (2) Architect/Engineer seeks payment for Services that were not performed under and in accordance with this Contract, in which case the amount of such payment may be withheld without notice; or
 - (3) Architect/Engineer has failed to make promptly when due any payment to any Consultant or other third party used by Architect/Engineer to perform this Agreement, and for which the Owner has paid Architect/Engineer, in which case payment equal to such amount may be withheld without notice.
- (b) Owner's right to withhold payment hereunder is in addition to any and all legal and/or equitable remedies available to Owner under the law. Architect/Engineer shall not claim or file, and hereby waives to the maximum extent permitted by law, any lien rights or other rights of encumbrance against the Owner's property and the

Projects. Architect/Engineer shall expressly refer to this waiver provision in all agreements with all Consultants engaged to perform the Services and require them to similarly agree to waive all such rights.

- (c) Prior to final payment to the Architect/Engineer, the Architect/Engineer shall furnish evidence satisfactory to the Owner that there are no claims, obligations or liens outstanding in connection with its Services. Acceptance of final payment shall constitute a waiver of all claims by the Architect/Engineer for compensation for its Services.
- (d) Should there be any claim, obligation or lien asserted before or after final payment is made that arises from the Architect/Engineer's Services, the Architect/Engineer shall reimburse the Owner for any costs and expenses, including attorneys' fees, costs and expenses, incurred by the Owner in satisfying, discharging or defending against any such claim, obligation or lien, including any action brought or judgment recovered, provided the Owner is making payments or has made payments to the Architect/Engineer in accordance with the terms of this Agreement.
- (e) Should the Architect/Engineer or its Consultants cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, the Owner shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect the Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

11.03 **Reimbursable Expenses.** All Architect/Engineer's reasonable and necessary reimbursable expenses incurred in the performance of Basic Services are included in the total amount listed above in [Article 11.01\(a\)](#).

11.04 **Additional Services.** Payments to Architect/Engineer for Additional Services, as described in [Article 5.10](#), shall be for a specified lump sum amount as agreed to in writing by the Owner and Architect/Engineer.

ARTICLE XII **INSURANCE**

12.01 The Architect/Engineer shall carry the following insurance in the amounts indicated herein and file with the Owner current copies of its complete insurance policies, including copies of all endorsements thereto, for each type and amount of insurance required hereunder prior to commencement of Services under this Agreement. The Architect/Engineer shall submit to the Project Coordinator at the signing of this Agreement full copies of all such insurance, and include therewith a summary sheet containing the mailing address, telephone number, fax number and email address listed by each respective insurer for filing claims. Architect/Engineer further authorizes Owner to directly request and obtain from

Architect/Engineer's insurers copies of all policies of insurance required hereunder.

- (a) Errors and Omissions Insurance and/or professional Liability Insurance (blanket coverage) with a minimum limit of \$1,000,000. Such policy shall cover the professional liability arising out of or in connection with any negligent act, error or omission of the Architect/Engineer or any of its Consultants, including all design professionals and any non-professional personnel, and all members of any subconsultant firm or any joint venture or other firm of the Architect/Engineer acting for, in combination with, on behalf of, or under the direction or control of the Architect/Engineer in the performance of any Services required under this Agreement, or arising from or in connection with the coordination, management or oversight of the Architect/Engineer's Consultants. This policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (i) bodily injury or property damage where coverage is provided on behalf of design professionals or subcontractors; (ii) habitational or residential operations; (iii) mold and/or microbial matter and/or fungus and/or biological substance; (iv) punitive, exemplary or multiplied damages; or (v) contractual liability caused by, related to, or arising from a negligent act, error or omission of the Architect/Engineer or any of its Consultants (or any limitation or exclusion that restricts coverage to only liability that would exist in the absence of a contract). If the professional liability policy is written on a "claims-made" policy form, Architect/Engineer shall maintain such coverage for three (3) years following termination of this Agreement or completion of all Work associated with this Project, whichever is later; provided that, the retroactive date must precede the date of commencement of Services under this Agreement.
- (b) Commercial General Liability:
- | | |
|----------------|--------------------------------|
| \$500,000.00 | Per Occurrence |
| \$1,000,000.00 | Aggregate Bodily Injury |
| \$500,000.00 | Property Damage |
| \$500,000.00 | Personal Injury A.B.C. |
| \$5,000,000.00 | Excess Policy (following form) |
- (c) Comprehensive Automobile Liability/\$500,000.00 per occurrence, Bodily Injury and Property Damage/All owned, non-owned and hired vehicles.
- (d) Worker's Compensation
- | | |
|-----------------------|-------------------------|
| Coverage A: Statutory | |
| Coverage B: | |
| \$500,000.00 | Each Accident |
| \$500,000.00 | Disease (policy) |
| \$500,000.00 | Disease (each employee) |
- (e) The cost of all insurance required herein to be secured and maintained by

Architect/Engineer shall be borne solely by Architect/Engineer, with certificates evidencing such minimum coverage in force to be filed with the Owner. Any changes, in coverage, shall be forwarded to the Owner thirty (30) days prior written notice of any cancellation or reduction in coverage.

- (f) Any other insurance requirements included in the Schedule of Insurance attached hereto as [Exhibit E](#):

12.02 With respect to the required insurance listed in Article 12.01(b) above, the policy shall:

- (a) Include Bexar County Hospital District d/b/a University Health System as an additional insured on a combination of unmodified ISO endorsements CG 20 10 10 01 and CG 20 37 10 01, or their equivalent.
- (b) Provide Bexar County Hospital District a waiver of subrogation.
- (c) Include terms making the policy primary and non-contributory to all policies of insurance maintained by Owner.
- (d) Provide Bexar County Hospital District with a thirty (30) day advance written notice of cancellation or material change to said insurance.

ARTICLE XIII

GENERAL PROVISIONS

- 13.01 **Force Majeure.** Subject to [Article 10](#), neither Owner nor Architect/Engineer shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible or circumstances beyond its control. However, notice of such impediment or delay in performance must be timely given and all reasonable efforts undertaken to mitigate its effects.
- 13.02 **Architect/Engineer's Standard of Care.** Architect/Engineer will perform, or cause to be performed, all Services and undertakings of Architect/Engineer hereunder expeditiously, and in no event later than is required to conform to the Comprehensive Design Schedule, and shall do so with that degree of professional skill and care practiced, and in accordance with industry standards customarily adhered to, by other firms practicing in the same or similar locality experienced in the performance of services and undertakings of the same or similar nature for other projects of comparable value. Architect/Engineer shall employ and exercise the professional judgment of its experienced and qualified design professionals to provide Owner confidence that the Project will be completed in conformity with the Owner's Project requirements. All Architect/Engineer's personnel performing Services under this Contract shall at all times be under Architect/Engineer's exclusive direction and control and Architect/Engineer shall be responsible for proper supervision and examination of the performance of the Services by the Architect/Engineer's personnel consistent with the

requirements of this Contract. Architect/Engineer's personnel assigned to the Project shall possess sufficient skills and professional expertise as required to satisfactorily meet all obligations and requirements of this Contract. Owner retains the right to reject or require Architect/Engineer to remove any of Architect/Engineer's personnel who Owner determines in its sole judgment and discretion fail to meet the standard for qualifications and performance of the Services required hereunder.

- 13.03 **Architect/Engineer's Warranty.** Architect/Engineer warrants each task and all Services rendered hereunder shall be performed in accordance with Architect/Engineer's Standard of Care, all Applicable Laws and the requirements of this Contract. Architect/Engineer shall re-perform any Services or Additional Services in accordance with this Contract as required to correct any error, omission, defect or deficiency arising to the extent any such error, omission, defect or deficiency arises as a result of Architect/Engineer's failure to perform the Services or Additional Services hereunder in accordance with Architect/Engineer's Standard of Care. This warranty does not apply to a defect in any equipment designed and manufactured by others and furnished or specified by Owner or others acting on behalf of Owner unrelated to breach of warranty, nor does it apply to defects caused by other Service Providers not under the control of Architect/Engineer. All implied warranties of merchantability and fitness for a particular purpose as to such equipment are specifically excluded. This warranty does not apply to any defect or deficiency caused by ordinary wear and tear, corrosion or erosion unrelated to a breach of warranty, or by operations contrary to or under conditions more severe than those permitted by written operating specifications, or by Owner's failure to report a defect or deficiency to Architect/Engineer not otherwise known to Architect/Engineer within a reasonable time after the defect or deficiency becomes known to Owner.

13.04 **Ownership of Instruments of Service.**

- (a) All Architect/Engineer's and Consultants' designs and work product under this Agreement including, but not limited to, tracings, computer-aided drafting files, drawings, estimates, electronic specification files, cost estimates, investigations, studies and other documents, completed or partially completed, shall be the property of the Owner, to be used as the Owner desires, without restriction; and Architect/Engineer specifically waives and releases any proprietary rights or ownership claim therein. All electronic files shall be compatible with Owner's software. Architect/Engineer may retain a reproducible copy of all design and work product, however, in consideration thereof, the Owner reserves the right, so long as such drawings exist, to obtain copies reproducible or otherwise, from Architect/Engineer at Owner's expense but without an additional fee or charge by Architect/Engineer.
- (b) The documents referenced in this Article are not intended or presented by the Architect/Engineer to be suitable for reuse by the Owner or others on extensions of this Project or on other unrelated projects. Any adaptation or use by the Owner of these documents on extension of this Project or other unrelated projects shall be at

the Owner's sole risk. The Owner agrees to hold harmless the Architect/Engineer against all damages, claims and losses arising out of any such reuse of the plans except as to any reuse by the Owner for a subsequent phase of this Project for which the Architect/Engineer has been selected to provide design services.

- 13.05 **Waiver of Consequential Damages.** Notwithstanding any other provision of this Contract, neither Party shall have any liability to the other for any contingent, consequential or other indirect damages including, without limitation, damages for loss of use, revenue or profit (direct or indirect); operating costs and facility downtime; or other similar business interruption losses, however, the same may be caused.
- 13.06 **Records Retention.** Records of Architect/Engineer's direct personnel, Consultants and reimbursable expenses (if any) pertaining to the Project and records of accounts between Owner and Architect/Engineer shall be kept on a generally recognized accounting basis and shall be available to Owner or its authorized representative at mutually convenient times for a minimum of three years after final Certificate for Payment to Prime Contractor for the completed Project.
- 13.07 **Entire Agreement.** Except as this Agreement may otherwise expressly state, this Agreement, together with all exhibits, represents the entire and integrated agreement between the Owner and the Architect/Engineer and supersedes all prior negotiations, representations and agreements either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Architect/Engineer. Owner shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind not set forth herein. The parties to this Agreement expressly agree that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution, and that this Agreement shall not be construed more strictly against either party regardless of which party may have authored any portion or provision herein. If, however, the Architect/Engineer's proposal for the services includes statements, terms, services or work that can reasonably be interpreted as offers at no additional cost to Owner to perform services or work meeting standards better than those otherwise required herein, or otherwise contain terms that are more advantageous or provide greater value to Owner than the requirements included herein, then Architect/Engineer's obligations hereunder shall, unless expressly excluded by this Agreement, include compliance with all such statements, terms, Services, which shall take priority.
- 13.08 **Approval Not Release.** Approval by the Owner shall not constitute nor be deemed a release of the responsibility and liability of Architect/Engineer, its employees, subcontractors, agents and Consultants for the accuracy and competency of their design, working drawings, specification or other documents and Work; nor shall such approval be deemed to be an assumption of such responsibility by the Owner for any defect, error or omission in the designs, working drawings, and specifications or other documents prepared by Architect/Engineer, its employees, subcontractors, agents and Consultants. Owner's approval or acceptance of Architect/Engineer's tasks and/or Services will not release Architect/Engineer from any liability for such tasks and/or Services because Owner is, at all

times, relying upon Architect/Engineer's skill and knowledge in performing its tasks and Services.

- 13.09 **Indemnity.** Architect/Engineer and each Consultant shall defend, indemnify, and hold harmless the Owner, their officers, agents and employees from any loss, damage, liability, claim or expense, including all legal and consulting fees, arising out of: (i) errors or omissions in the Architect/Engineer's and each Consultant's design documents; (ii) any actual or alleged negligent act, error or omission on the part of Architect/Engineer, its employees, agents, Consultants or subcontractors in the performance of this Agreement; or (iii) any breach of any obligation under this Agreement.
- 13.10 **Assignment.** Architect/Engineer shall not assign, or transfer any interest in this Agreement without prior written authorization by the Owner. Any assignment or transfer without the prior written consent of Owner shall be void.
- 13.11 **Discrimination.** As a condition of this Agreement, Architect/Engineer hereby covenants that it will take all necessary action to insure that, in connection with any work under this Agreement, it and its Consultants and subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the ground of race, color, religion, national origin, age, sex, or physical handicap unrelated to job performance, wither directly, indirectly or through contractual or other arrangements. In this regard, Architect/Engineer shall keep, retain and safeguard all records relating to this Agreement or work performed hereunder for a minimum period, following Project completion, or three (3) years, with full access allowed to authorized representatives of the Owner upon request, for purposes of evaluating compliance with this and other provisions of the Agreement.
- 13.12 **Architect/Engineer's Subcontracting Plan.**
- (a) Architect/Engineer shall comply with 48 CFR 52.219-8, Utilization of Small, Service-Disabled Veteran-Owned Small Business, HUBZone Small Business, Small Disadvantaged Business and Woman-Owned Small Business concerns and 48 CFR 52.219-9, Small Service-Disabled Veteran-Owned Small Business, HUBZone Small Business, Small Disadvantaged Business and Woman-Owned Small Business Subcontracting Plan. Architect/Engineer shall carry out, and shall cause all Consultants to carry out, all such applicable requirements.
 - (b) Architect/Engineer shall implement a subcontracting plan to promote utilization of both large and small, non-minority, minority, HUBZone, service-disabled veteran and/or woman-owned businesses, and shall prepare and submit a Summary Subcontract Report Standard Form 294 or 295, in accordance with the instructions on the form and all supporting documentation as deliverables required by Owner hereunder and by the United States Government. The aforementioned documentation shall be submitted to the Owner's following authorized representative and shall not be changed without prior written consent of Owner.

Name:
Title:
University Health System
4502 Medical Drive, MS #
San Antonio, TX 78229-4493

- (c) Alternatively, upon Owner's request and in lieu of preparing and submitting the Summary Subcontract Report Standard Forms 294 or 295, Architect/Engineer shall log on to the Owner's B2G Reporting System ("B2G System") and enter, and shall require its Consultants, subcontractors, subconsultants, and vendors to log on to the B2G System and enter, all data required to be maintained under in the B2G System to appropriately and timely identify each of Architect/Engineer's Consultants, subcontractors, subconsultants, and vendors and to promptly verify the amounts of all payments as and when issued and released to or received by them in connection with the performance of this Contract.
- (d) Architect/Engineer agrees that it shall exercise good faith efforts to replace any minority or women-owned Consultant, subcontractor, subconsultant or vendor whose performance of the Services or Additional Services hereunder is terminated or discontinued for any reason with at least an equally qualified minority or women-owned subcontractor, subconsultant or vendor in accordance with the Owner's policy.

13.13 **Captions.** The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

13.14 **Notices.** Any notice, approval, or other communication directive provided for between the parties pursuant to this Contract shall be in writing and shall be deemed to have been properly given and effective upon receipt, if such notice shall have been (i) delivered by hand, (ii) mailed, postage prepaid, registered or certified, addressed to the following individuals, who shall be the parties' respective authorized agents:

To Owner:

Name:
Title:
4502 Medical Drive, MS #:
San Antonio, TX 78229-4493

With a copy to:

Michael Hernandez, Esq.
Chief Legal Officer
Vice President - Legal Services

University Health System
Corporate Square
4801 NW Loop 410, MS -113-1
San Antonio, Texas 78229

and

Richard Rodriguez
Vice President/Support Services
4502 Medical Drive, MS #
San Antonio, TX 78229-4493

To Architect/Engineer:

- 13.15 **Texas Law to Apply/Venue.** This Agreement shall be construed under and in accordance with the laws of the United States and the State of Texas, and all obligations of the parties are performable and venue shall lie in Bexar County, Texas.
- 13.16 **Severability.** If any provision in this Agreement is held to be unenforceable, the remainder of this Agreement shall continue in full force and effect and, to the extent permitted by applicable law, this Agreement shall be interpreted so as to give the effect to the original written intent of the parties. If any portion of a provision is held to be unenforceable, the remainder shall be enforced to the maximum extent so as to give effect to the original written intent of the parties.
- 13.17 **Survivability.** All terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by Owner and Architect/Engineer and their respective successors in interest.
- 13.18 **Financial Interest/ Broker.** Architect/Engineer covenants and represents that Architect/Engineer, its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for the construction of the Project. Architect/Engineer warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Architect/Engineer for the purpose of securing business.

13.19 **Non-disclosure.** Architect/Engineer's reports, evaluations, designs, drawings, data, and all other documentation and work developed by Architect/Engineer hereunder shall be kept confidential and shall not be disclosed to any third parties by Architect/Engineer without the prior written consent and approval of the Owner.

13.20 **Compliance with Laws and Requirements.**

- (a) The Architect/Engineer, its Consultants, agent's employees and subcontractors shall comply with current applicable federal, state and local laws, ordinances and other applicable requirements, including, but not limited to, applicable rules, policies, procedures and requirements of the Texas Department of State Health Services and the Joint Commission. Architect/Engineer shall further obtain all permits and licenses required in the performance of the professional services contracted for herein.
- (b) All Services shall be performed so as to cause the Project to be constructed in strict compliance with Joint Commission Standards, and any other standards of The Joint Commission that are or become applicable to Owner. If the Architect/Engineer determines either that any its personnel or Consultants are not aware of the information concerning the Joint Commission or that the Architect/Engineer's personnel or Consultants are acting in violation of Joint Commission standards, then Architect/Engineer shall notify or otherwise report such violation to the Project Coordinator. Under no circumstances shall Architect/Engineer actively or passively cause, or knowingly permit others to cause, Owner to be in violation of The Joint Commission standards. Architect/Engineer shall comply with specific standards of the Joint Commission applicable for the Project, and shall undergo orientation related to Joint Commission standards as required by the Owner.
- (c) Architect/Engineer warrants that all Services shall be performed in strict compliance with all Applicable Laws and regulations and all other laws and regulations dealing with employer-employee relations, including, as amended, the "Fair Labor Standards Act" of 1938, the "Walsh-Healy Act", and "Nondiscrimination in Employment", Executive Order No. 11246 of September 24, 1964, and all codes laws and regulations required to be incorporated in a contract of this character are hereby incorporated herein by reference. Compliance with the above shall include the adoption of all programs, making of all certifications and filing of all reports as required thereby. All terms required by any of the foregoing are hereby incorporated herein by reference. Architect/Engineer shall execute and deliver to Owner such documents as may be required to effect or evidence compliance.

13.21 **No Material Change in Qualifications or Responses to Request for Qualifications.** All information contained in Architect/Engineer's responses to Owner's RFQ, including but not limited to Architect/Engineer's statements and representations as to its history, experience, capabilities, litigation disclosure, financial information, and other qualifications are accurate and complete, and no material change in circumstances has occurred that would cause

Architect/Engineer's responses to be untrue or materially different than what was originally stated.

- 13.22 **Taxes/Exemption.** Architect/Engineer will pay all taxes, if any, required by law arising by virtue of the services performed hereunder. The Owner is qualified for exemption pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act.
- 13.23 **Asbestos.** It is understood and agreed that the handling or removal of asbestos or asbestos products involves certain health risks which requires specific safety measures. The Architect/Engineer and Consultant shall not be responsible for safety and safety measures on the job, including measures for the protection of employees of the Prime Contractor, subcontractors, nor for the safety measures is, and shall remain, that of the Prime Contractor.
- 13.24 **Dispute Resolution.** In an effort to resolve any conflicts that arise during the design or construction of the Project or following the completion of the Project, the Owner and the Architect/Engineer agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation prior to the filing of suit by either Party.
- 13.25 **Prevailing Party Recovers Attorney's Fees.** In any dispute arising under this Agreement, the following shall apply in the determination of which Party is the prevailing Party. If a Party claiming a right to payment of an amount in dispute is awarded all or substantially all of such disputed amount, then such claiming Party shall be the prevailing Party. If a Party defending against such claim is found to be not liable to pay all or substantially all of the disputed amounts claimed by the claiming Party, then the Party so defending against such claim shall be the prevailing Party. If both Parties prevail with respect to different claims by each of them, then the Party who is prevailing with respect to the substantially greater monetary sum shall be deemed the prevailing Party; otherwise, if both Parties prevail with respect to monetary sums on different claims, neither of which sums is substantially greater than the other, the tribunal having jurisdiction over the controversy, claims or actions shall in rendering the award determine in its discretion whether and to what extent either Party should be entitled to recover any portion of its attorney fees. The prevailing Party shall be entitled to recover reasonable attorney fees and costs.
- 13.26 **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant or condition hereof, as third party beneficiaries or otherwise, and all of the terms, covenants and conditions hereof shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns.
- 13.27 **Conflicts of Interest.** Architect/Engineer has been furnished a copy of, and Architect/Engineer has completed and provided to Owner prior to execution of this Contract and in accordance with the requirements for the timely filing thereof under Chapter 176 of the Texas Local Government Code, true and complete answers to Owner's Conflict of

Interest Questionnaire, adopted June 29, 2007. Architect/Engineer agrees to update its responses to the Owner's Conflict of Interest Questionnaire as required by Chapter 176 of the Texas Local Government Code, and Owner shall have the right at any time to require Architect/Engineer to complete and furnish to Owner a current Conflict of Interest Questionnaire form, which shall be completed and furnished to Owner promptly upon Owner's written request, failing in which Owner may terminate this Contract. Architect/Engineer represents that it has advised Owner in writing of any past or present relationship or dealing with any third party, including competitors of Owner or Architect/Engineer, which could or could be perceived to impair or interfere with the Architect/Engineer's exercise of its independent judgment and discretion in professionally and ethically rendering of Services for the sole benefit and enjoyment of Owner under this Contract or which could cause Owner to change its evaluation of Architect/Engineer and the decision to enter into this Contract with Architect/Engineer ("Conflict of Interest"). A Conflict of Interest shall also exist when, because of other undisclosed activities or relationships with third parties, Owner determines in its sole discretion that Architect/Engineer is unable to render impartial assistance, advice, or Services to Owner, or the Architect/Engineer's objectivity in performing the Services is or might be otherwise impaired, or when Architect/Engineer gains an unfair competitive advantage or receives undisclosed profits or benefits in addition to compensation for its performance of Services under this Contract. Architect/Engineer shall at all times during the performance of this Contract remain free of any obligation of any kind to any person other than Owner where such obligation may cause or require Architect/Engineer to compromise or otherwise be in breach of its obligations to Owner, including without limitation its obligations with respect to proprietary rights and confidentiality and conflicts of interests. Architect/Engineer has not undertaken, and during the period covered by this Contract, Architect/Engineer shall not undertake any relationship with any party that could give rise to such a Conflict of Interest without the prior written consent of Owner. Architect/Engineer shall immediately advise Owner of any relationship that may give rise to a Conflict of Interest during the term of this Contract. If Owner becomes aware of any such relationships, through Architect/Engineer's disclosure or otherwise, Owner shall have the option to terminate this Contract in whole or in part without further liability to Architect/Engineer.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

13.28 **Compliance Statement of Architect/Engineer.** The Texas Board of Architectural Examiners (Hobby Building, 333 Guadalupe, Suite 2-350, Austin, Texas 78701, mailing address TBAE, P.O. Box 12337, Austin, Texas 78711, tel. 512-305-9000) has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas.

EXECUTED ON THE DATE FIRST WRITTEN ABOVE.

OWNER:

Bexar County Hospital District d/b/a
University Health System

By: _____

Name:

Title: Director of Purchasing

ARCHITECT/ENGINEER:

By: _____

Name:

Title:

EXHIBIT A

LIST OF ARCHITECT/ENGINEER'S APPROVED CONSULTANTS

[illegible]

EXHIBIT B

DETAILED SCOPE OF BASIC SERVICES

In additional to all basic services described in Articles 5, 6 and 7 of the Agreement, the Architect/Engineer shall provide all services described herein as basic services under the Agreement.

I. DESIGN PHASE SERVICES

A. PROGRAMMING PHASE

[INCLUDE SCOPE OF SERVICES FOR THIS PHASE FROM ARCHITECT/ENGINEER'S PROPOSAL]

B. SCHEMATIC DESIGN PHASE

[INCLUDE SCOPE OF SERVICES FOR THIS PHASE FROM ARCHITECT/ENGINEER'S PROPOSAL]

C. DESIGN DEVELOPMENT PHASE

[INCLUDE SCOPE OF SERVICES FOR THIS PHASE FROM ARCHITECT/ENGINEER'S PROPOSAL]

D. CONSTRUCTION DOCUMENTS PHASE

[INCLUDE SCOPE OF SERVICES FOR THIS PHASE FROM ARCHITECT/ENGINEER'S PROPOSAL]

E. BIDDING/PERMITTING PHASE

[INCLUDE SCOPE OF SERVICES FOR THIS PHASE FROM ARCHITECT/ENGINEER'S PROPOSAL]

II. CONSTRUCTION ADMINISTRATION SERVICES

[INCLUDE SCOPE OF SERVICES FOR THIS PHASE FROM ARCHITECT/ENGINEER'S PROPOSAL]

III. MISCELLANEOUS SERVICES

Architect/Engineer's basic services includes the Owner's intended scope of work as stated below:

1. Site visits during the design phase to verify current building conditions.
2. Coordination of design efforts with UHS personnel to carefully tie in to existing utilities.
3. Implementation of ergonomic features throughout the design.
4. Completion of design documents (i.e. drawings and specifications) necessary for permitting and contractor solicitation.
5. Submission of detailed drawing/specification of all demolition work, new construction, finishes, casework, plumbing, lighting, HVAC, telephone and computer utilities.
6. Submission of Construction Documents compliant with all Applicable Laws.
7. Coordination of design and construction documents with Owner's affected departments, including security, information services, physical plant, and facilities development departments.
8. Preparation of Construction Documents as required to assist in presentation of Project to State, Local and Federal Reviewing Agencies.
9. Coordination of design efforts with existing on-site utilities.
10. Coordination with Owner in submission of Construction Documents to allow for multiple phasing of construction with minor disruption to existing services.
11. Submission of electronic files of Drawings and Specifications to Owner's Facilities Development Program.

EXHIBIT C

ARCHITECT/ENGINEER'S COMPREHENSIVE DESIGN SCHEDULE

[ATTACH THE COMPREHENSIVE DESIGN SCHEDULE AS EXHIBIT C TO THE AGREEMENT]

SAMPLE

EXHIBIT D

SCHEDULE OF ARCHITECT/ENGINEER'S FEES

[ATTACH FEE SCHEDULE AS EXHIBIT D TO THE AGREEMENT]

SAMPLE

EXHIBIT E

SCHEDULE OF INSURANCE

[ATTACH SCHEDULE OF INSURANCE AS EXHIBIT E TO THE AGREEMENT]

SAMPLE