

**Agreement Between Owner and Contractor for Furniture, Furnishings and Equipment
where the basis of payment is a Stipulated Sum**

Agreement (this "Agreement") made as of the ____ day of _____ in the year of 20__.

BETWEEN the Owner, whose name and mailing address are as follows:

William Marsh Rice University, a Texas non-profit corporation
6100 Main Street, MS-312
Houston, Texas 77005
Attention: _____

[NOTE TO DRAFTER: If the party entering into this contract is a Rice subsidiary, change the name and entity type of 'Owner' to refer to the correct entity.]

and the Contractor, whose name and mailing address are as follows:

Attention: _____

the Project is:

The Owner and Contractor agree as set forth below:

The following terms when used in this Agreement or in any of the other Contract Documents shall have the following meaning:

- (a) The term "Owner" shall mean the entity described above.
- (b) The term "Contractor" shall mean _____, a _____
[if the Contractor is an entity, describe the type of entity, such as a corporation, partnership, etc. and the state of organization].
- (c) The term "Consultant" shall mean _____. In the event the Owner does not engage a Consultant with respect to the Project, the term "Consultant" as used in this Agreement and in the other Contract Documents

shall refer to the Owner, who shall have all of the rights of the Consultant thereunder, but not any of the duties or obligations of the Consultant.

- (d) The term “Project” shall mean _____, which, at a minimum, shall include the matters described in Section 3.2 hereof to the extent applicable to the Work.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of (i) this Agreement, (ii) the General Conditions of the Contract for Furniture, Furnishings and Equipment attached hereto as Attachment I and the Exhibits thereto (hereinafter sometimes referred to as the “General Conditions”), (iii) Attachments II, III and IV hereto, (iv) the Drawings, Specifications and other documents listed in this Agreement, (v) any addenda issued prior to the execution of this Agreement, if specifically referenced in Section 8.1.6 below, and (vi) written Change Orders executed by Owner and Contractor after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Change Orders executed by Owner and Contractor after the execution of this Agreement, appears in Article 8.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, or reasonably inferable therefrom, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

Contractor shall furnish all materials, supplies, apparatuses, appliances, equipment, scaffolding, fixtures, tools, implements and all other facilities and all labor, supervision, transportation, utilities, storage and all other services as and when required for or in connection with the performance of the Work unless otherwise expressly provided in the Contract Documents. The Work shall be done in a professional and competent manner, consistent with the Owner’s design requirements and the Contract Documents, and all materials shall be new and in accordance with the Contract Documents. Contractor shall cause all materials to be readily available as and when needed to adhere to the Performance Schedule (as defined below) to permit the timely completion of the Work.

ARTICLE 3 COMMENCEMENT AND COMPLETION OF THE WORK

§3.1 The Owner anticipates that the Project, or the portion or portions thereof where the Work is to be performed, will achieve the state of completion necessary for the Contractor to commence the performance of the Work on or about _____ (the “Anticipated Commencement Date”). In the event the Project, or the portion or portions thereof where the Work is to be performed, have not achieved the necessary state of completion for the Contractor

to commence the performance of the Work by the Anticipated Commencement Date, the Owner shall give the Contractor written notice thereof; provided, however, the Owner shall have no liability to the Contractor as a result of such failure, and nothing thereby shall release or relieve the Contractor from any of its agreements or obligations under the Contract Documents.

§3.2 A description of the following matters is attached hereto as Attachment II (the “Proposal”) to the extent applicable to the Work:

- (a) The items of furniture, furnishings, fixtures, equipment and other matters (the “FF&E”) to be furnished and/or installed by the Contractor under the Contract Documents (collectively, the “Work”);
- (b) A schedule of the prices to the Owner of the individual items of FF&E included in the Work (the “Schedule of Prices”), which Schedule of Prices was used by the Contractor in the calculation of the Contract Sum; and
- (c) A schedule for performance of the Work (the “Performance Schedule”), which Performance Schedule shall satisfy the requirements of Section 3.3 below.

§3.3 At such time as the Project, or the portion or portions thereof where the Work is to be performed, have achieved the necessary state of completion for the Contractor to commence the performance of the Work, the Owner shall give written notice thereof to the Contractor (the “Commencement Notice”), and the Contractor shall (i) commence performance of the Work within five (5) business days after the date of the Commencement Notice and (ii) achieve Final Completion (as defined in the General Conditions) of all of the Work [within _____ (____) days after the date of the Commencement Notice] **OR** [by _____, 20__] [*NOTE TO DRAFTER: Please select the appropriate option and insert the Final Completion date. DO NOT include both bracketed provisions.*] (the “Contract Time”), subject to adjustments of the Contract Time as provided in the Contract Documents. The Contractor must notify the Owner and the Consultant within five (5) days of any event that the Contractor believes entitles the Contractor to an extension of the Contract Time. It shall be the Contractor’s responsibility to establish that any alleged delay affected the agreed schedule. Failure to timely notify the Consultant and Owner shall be a waiver by Contractor of any right to an extension of the Contract Time for such event. In the event of a delay not excused under the terms of the Contract Documents, the Contractor shall, at the direction of the Owner, accelerate performance of the Work by means of overtime, additional crews or resequencing of the Work in order to achieve Final Completion of the Work within the Contract Time, all at the Contractor’s sole cost and expense, not to be included in the Contract Sum.

ARTICLE 4 CONTRACT SUM

§4.1 The Owner shall pay the Contractor in current funds for the Contractor’s performance of the Contract and completion of the Work pursuant to the Contract Documents, payable in accordance with Article 5 below and elsewhere in the Contract Documents, the Contract Sum of _____ Dollars (\$_____), subject to such additions and deductions as may be agreed to by the Owner and the Contractor in written Change Orders. The

Contractor warrants and represents to the Owner that the Contractor has the financial capability of obtaining the FF&E from the suppliers thereof without requiring the Owner to place any deposit or other security with, or make any prepayment of the Contract Sum to, the Contractor, other than as specifically provided for in Article 5 below.

§4.2 The Contract Sum is based upon the alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner.

§4.3 Unit prices, if any, are as follows:

ARTICLE 5 PROGRESS PAYMENTS

§5.1 Based upon a written invoice or invoices (each, an “Invoice”) submitted by the Contractor to the Consultant and the Owner and approved by the Consultant and the Owner, the Owner shall, subject to the provisions of the Contract Documents, pay the Contract Sum to the Contractor in full upon completion of the Work, unless otherwise provided in the Contract Documents. Each Invoice shall (1) be in a format satisfactory to the Owner, (2) be executed by the Contractor, (3) contain an itemization of the items of FF&E covered thereunder and the prices thereof, keyed to the Proposal, (4) be supported by such data substantiating Contractor’s right to payment as the Owner may require, such as copies of requisition forms from Subcontractors and material suppliers, payrolls and invoices, and (5) be accompanied by (A) a Conditional Waiver and Release on Progress Payment from the Contractor in the form attached as Attachment III hereto, except with respect to the final (or only) Invoice, which shall be accompanied by a Conditional Waiver and Release on Final Payment from the Contractor in the form attached as Attachment IV hereto, and (B) all warranties and guaranties obtained by the Contractor from the manufacturer of the Items of FF&E covered thereunder, together with such operation, maintenance and other instructional materials relating to such items of FF&E as the Owner may require. The Contractor shall furnish a copy of each Invoice to the Owner concurrently with the submission thereof to the Consultant. If any aspect of the Work included in an Invoice is found by the Owner to be unsatisfactory or not in compliance with the provisions of the Contract Documents, the Owner may make proper withholding from the Invoice with respect thereto and the Owner shall not be considered in default under this Agreement as a result thereof.

§5.2 The period covered by each Invoice shall be one calendar month if more than one Invoice will be submitted for the Work, and the Contractor shall submit Invoices no more frequently than monthly.

§5.3 The Owner shall make payment to the Contractor of any amounts to become owing by the Owner under the Contract Documents not later than the thirtieth (30th) day following receipt by the Owner of an Invoice that has been approved by the Consultant and the Owner.

§5.4 Each Invoice shall be based upon the lesser of (i) the aggregate of the prices of the items of FF&E covered thereunder or (ii) a percentage of the Contract Sum equal to the percentage of the entire Work that has been completed as of the date of the Invoice, except if there will only be one Invoice, such Invoice shall be for the entire Contract Sum.

§5.5 Invoices shall indicate and warrant the percentage of completion of the portion of the Work covered by the Invoice.

§5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment (if applicable) shall be computed as follows:

§5.6.1 Take the lesser of (i) the aggregate of the prices of the items of FF&E covered by the Invoice and for which installation has been completed, based on the prices set forth in the Schedule of Prices, or (ii) a percentage of the Contract Sum equal to the percentage of the entire Work that has been completed as of the date of the Invoice.

§5.6.2 Subtract amounts, if any, for which the Consultant or Owner has withheld or nullified payment of an Invoice as provided in Paragraph 10.5 of the General Conditions.

ARTICLE 6 MISCELLANEOUS PROVISIONS

§6.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

§6.2 The term “business day” or “business days” as used in this Agreement or any of the other Contract Documents shall mean a day that is not a Saturday, Sunday or legal holiday in Houston, Texas. All other references to “day” or “days” in this Agreement or any of the other Contract Documents shall mean a calendar day.

ARTICLE 7 TERMINATION

§7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 15 of the General Conditions.

ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

§8.1 The Contract Documents, except for written Change Orders executed by the Owner and the Contractor after execution of this Agreement, are enumerated as follows:

§8.1.1 The Agreement is this executed Agreement Between Owner and Contractor.

§8.1.2 The General Conditions are the General Conditions of the Contract for Furniture, Furnishings and Equipment attached hereto as Attachment I, and any Exhibits thereto.

§8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated _____, and are as follows:

Document	Title	Pages
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§8.1.4 The Specifications are those contained in the Project Manual dated as set forth in Section 8.1.3, and are as follows:

Section	Title	Pages
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§8.1.5 The Drawings are as follows, and are dated _____, unless a different date is shown below:

Number	Title	Pages
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§8.1.6 The addenda, if any, are as follows:

Number	Title	Pages
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Portions of addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

§8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

- (a) The Proposal attached hereto as Attachment II, which Proposal includes a description of the FF&E, the Schedule of Prices and the Performance Schedule.

(b) The form of Conditional Waiver and Release on Progress Payment attached hereto as Attachment III.

(c) The form of Conditional Waiver and Release on Final Payment attached hereto as Attachment IV.

This Agreement is entered into as of the day and year first written above and is executed in at least two (2) original copies.

[End of text.]

OWNER:

CONTRACTOR:

**WILLIAM MARSH RICE UNIVERSITY,
a Texas non-profit corporation**

_____,
a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTACHMENTS:

ATTACHMENT I: GENERAL CONDITIONS OF THE CONTRACT FOR FURNITURE,
FURNISHINGS AND EQUIPMENT

ATTACHMENT II: PROPOSAL

ATTACHMENT III: CONDITIONAL WAIVER AND RELEASE ON PROGRESS
PAYMENT

ATTACHMENT IV: CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT