

RICE UNIVERSITY SHORT FORM CONTRACT

This Rice University Short Form Contract (this "Contract") is entered into by and between WILLIAM MARSH RICE UNIVERSITY, a Texas non-profit corporation (the "University"), and [insert legal name of entity] _____, a _____ [if Contractor/Supplier is an entity, describe type of entity, such as "corporation," "partnership," etc., including the name of the state under whose jurisdiction the entity was created] (the "Contractor/Supplier"), which parties hereby agree as follows:

1. DESCRIPTION OF WORK/MATERIALS: Contractor/Supplier agrees to perform for, and/or furnish to, the University the following work, services and/or materials (collectively, the "Work/Materials"):

SELECT ONE: ~ Description of Work/Materials:

OR

~ Description of the Work/Materials is attached hereto as Attachment 1, by reference made a part hereof.

2. SITE OF PERFORMANCE: The Work/Materials shall be performed at, or furnished to, the following location (the "Site"): _____.

3. CONTRACT TIME: The Contractor/Supplier shall complete the performance or furnishing of the Work/Materials on _____, 20__ (the "Completion Date").

4. CONTRACT AMOUNT: The University shall pay to Contractor/Supplier for the proper performance or furnishing of the Work/Materials, subject to such additions and deductions as may be provided for herein, the following (the "Contract Amount"):

SELECT ONE: ~ A lump sum amount of \$_____.

OR

~ On a time and materials basis, based on the rate schedule attached hereto as Attachment 2, by reference made a part hereof.

Amounts to become owing to the Contractor/Supplier hereunder shall be payable as follows:

SELECT ONE: ~ Single payment, upon completion of performance or furnishing of Work/Materials.

OR

~ In periodic payments, based on the Work/Materials performed or furnished.

5. **STANDARD CONDITIONS:** The provisions of the Standard Conditions for use with the Rice University Short Form Contract set forth in Attachment 3 attached hereto (collectively, the "Standard Conditions") are by reference made a part hereof as though set forth at length herein.

6. PAYMENT: Subject to Paragraphs 7 and 9 of this Contract, the University will pay Contractor/Supplier for Work/Materials performed hereunder within thirty (30) days after receipt and approval of each request for payment from Contractor/Supplier representing that the relevant portion of the Work/Materials is complete in accordance with the provisions of this Contract. Contractor/Supplier shall not submit a request for payment more frequently than once in any thirty (30) day period. If any aspect of the Work/Materials under a request for payment is found by the University to be unsatisfactory or not in compliance with the provisions of this Contract, the University may make proper withholding from the request for payment with respect thereto and the University shall not be considered in default under this Contract as a result thereof.

7. RETAINAGE: The University may, in its sole discretion, withhold ten percent (10%) of all amounts to become owing to Contractor/Supplier under this Contract as retainage until thirty (30) days after the performance or furnishing of the Work/Materials has been completed.

8. INSURANCE. During the performance or furnishing of the Work/Materials, the Contractor/Supplier shall, at its cost and expense, obtain and maintain in effect the policies of insurance, including the coverages, terms and limits, set forth in the Rice University Insurance Requirements attached as Attachment 4 hereto. Prior to commencement of the performance or furnishing of the Work/Materials, Contractor/Supplier shall provide certificates evidencing such insurance coverage in accordance with Attachment 4 attached hereto. Furthermore, the Contractor/Supplier shall provide at least thirty (30) days ' prior written notice to the University if any such policy of insurance shall be canceled, terminated, reduced, restricted, limited or materially changed.

9. RELEASES. With each request for payment, the Contractor/Supplier shall furnish to the University (i) a Conditional Waiver and Release on Progress Payment in the form attached hereto as Attachment 5, executed by the Contractor/Supplier and each of its subcontractors and suppliers, and (ii) with the final request for payment, a Conditional Waiver and Release on Final Payment in the form attached hereto as Attachment 6, executed by the Contractor/Supplier and each of its subcontractors and suppliers.

10. SINGLE AGREEMENT: This Contract constitutes the entire agreement between the University and Contractor/Supplier with respect to the Work/Materials and supercedes all prior and contemporaneous agreements, understandings and negotiations with respect thereto, including without limitation, the provisions of any Contractor/Supplier invoice, bill, statement or proposal.

11. AMENDMENT: This Contract and the provisions hereof may not be amended, changed or extended, by course of conduct or otherwise, except by written instrument signed by the University and Contractor/Supplier.

12. COUNTERPARTS/FACSIMILE OR ELECTRONIC EXECUTION: This Contract may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The facsimile or electronic transmission of the signature of any party executing this Contract on behalf of the University or the Contractor/Supplier to the other party hereto shall constitute an original thereof.

13. TERMINATION: The University reserves the right, which right shall be in addition to all rights created in favor of the University under Paragraph 6 of the Standard Conditions, to terminate this Contract at any time, without cause, upon written notice thereof to Contractor/Supplier, in which event the Contractor/Supplier shall be paid for Work/Materials performed or supplied as of the date of termination.

EXECUTED as of the _____ day of _____, 20_____.

THE UNIVERSITY:

CONTRACTOR/SUPPLIER:

WILLIAM MARSH RICE UNIVERSITY,
a Texas non-profit corporation

a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Mailing Address of Contractor/Supplier:

Attention: _____

Street Address of Contractor/Supplier:

By: _____
Name: _____
Title: _____

Mailing Address of University:
William Marsh Rice University
Facilities Engineering and Planning
6100 Main Street, MS-312
Houston, Texas 77005

Attention: _____

ATTACHMENT 1

DESCRIPTION OF WORK AND MATERIALS

FOR USE WITH RICE UNIVERSITY SHORT FORM CONTRACT

[NOTE TO DRAFTER: APPROPRIATE DOCUMENTS DESCRIBING THE SERVICES, WORK/MATERIALS AND THE TIME FOR PERFORMANCE SHOULD BE ATTACHED AS ATTACHMENT 1. ADD ADDITIONAL PAGES IF NECESSARY. DO NOT ATTACH THE CONTRACTOR'S ESTIMATE, PROPOSAL, ETC.]

ATTACHMENT 2

RATE SCHEDULE

FOR USE WITH RICE UNIVERSITY SHORT FORM CONTRACT

[NOTE TO DRAFTER: APPROPRIATE DOCUMENTS DESCRIBING THE BILLING RATE OR FIXED FEE SHOULD BE ATTACHED AS ATTACHMENT 2. ADD ADDITIONAL PAGES IF NECESSARY. DO NOT ATTACH THE CONTRACTOR'S ESTIMATE, PROPOSAL, ETC.]

ATTACHMENT 3

STANDARD CONDITIONS

FOR USE WITH RICE UNIVERSITY SHORT FORM CONTRACT

The following provisions are made a part of the Rice University Short Form Contract as though set forth at length therein:

1. **EXPENSES OF PERFORMANCE.** Unless otherwise specified in this Contract, the Contractor/Supplier shall provide and pay for all labor, materials, equipment, machinery, tools, transportation, utility services and other costs and expenses necessary or incidental to the proper performance or furnishing of the Work/Materials. The University is exempt from certain federal and state taxes and shall not pay or otherwise be liable, directly or indirectly, for any such taxes in any way related to the Work/Materials.

2. **SHIPPING.** The Work/Materials shall be delivered F.O.B. the Site, unless this Contract specifies otherwise. The Contract Amount includes any and all charges for packaging, shipping, handling and insurance.

3. **REPRESENTATIONS AND WARRANTY.** Contractor/Supplier represents and warrants to the University that any Work/Materials performed or furnished under this Contract shall (a) conform to the terms and provisions of this Contract, (b) be performed or furnished in a good and workmanlike manner and in accordance with standards of care, skill and diligence consistent with recognized applicable industry practices and procedures, (c) be new, unless this Contract provides otherwise, and (d) be of good quality and free from faults and defects in materials and workmanship, in each case, for a period of one year (or longer if otherwise specified in this Contract) after final completion of the performance or furnishing of the Work/Materials. The warranty provided for in this Paragraph 3 shall be in addition to, and not in limitation of, any other warranty or remedy required or permitted by law or this Contract, and such warranty shall be interpreted to require the Contractor/Supplier, at its expense, to replace any defective or faulty Work/Materials that are disclosed to the Contractor/Supplier within said one year period. Any such correction shall also be warranted for an additional warranty period of one year from the date of such correction.

4. **INSPECTION AND APPROVALS.** All Work/Materials shall be subject to inspection by, and final approval of, the University or the University's designated agent.

5. **WITHHOLDING OF PAYMENTS.** The University may, in its sole discretion, withhold all or part of any payment otherwise to become owing to Contractor/Supplier as a result of Contractor/Supplier's failure (a) to complete the performance or furnishing of the Work/Materials in accordance with the requirements of this Contract or (b) to address any reasonable concerns of the University regarding any pending or threatened claim or lien, including any mechanic's or materialman's lien claim, arising out of or related to the performance or furnishing of the Work/Materials. When the basis for any such withholding has been resolved to the University's satisfaction, the amounts withheld, less any costs and expenses incurred by the University as a result of any occurrence described in the immediately preceding clauses (a) or (b), shall be paid to Contractor/Supplier.

6. **RIGHTS IN EVENT OF DEFAULT.** In the event that Contractor/Supplier fails to comply with any of the terms or provisions of this Contract, declares bankruptcy, makes a general assignment for the benefit of its creditors, has a receiver appointed on account of its insolvency, or is not generally paying its debts when due, then, in any such event, the University shall have all rights available to it as a result thereof at law or in equity, including, without limitation, the right to cancel, by written notice to Contractor/Supplier, all or any part of this Contract without liability to Contractor/Supplier.

7. **TIME OF THE ESSENCE.** Any and all time limits stated in this Contract are of the essence.

8. **CONDITION OF SITE.** Contractor/Supplier acknowledges by the execution of this Contract that it has investigated and inspected the Site regarding its suitability for the performance or furnishing of the Work/Materials, and accepts the same "AS IS" "WHERE IS" and "WITH ALL FAULTS," without any representation or warranty by the University with respect thereto.

9. **DAMAGES AND CLEAN-UP.** Contractor/Supplier shall be responsible and liable for ensuring that the Site and other University-owned property are not damaged in connection with performance or furnishing of the Work/Materials, and shall reimburse the University upon demand for all costs, expenses, charges or fees relating to the replacement or repair of any such loss or damage. If any trash or debris is generated in connection with the performance or furnishing of the Work/Materials, Contractor/Supplier shall remove the same from the Site on a daily basis.

10. **INDEMNIFICATION.** (a) TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR/SUPPLIER SHALL INDEMNIFY, HOLD HARMLESS, PROTECT AND DEFEND THE UNIVERSITY AND ITS SUBSIDIARIES AND THEIR RESPECTIVE TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS AND AFFILIATES (THE "INDEMNIFIED PARTIES") FOR, FROM AND AGAINST ANY AND ALL DEMANDS, CLAIMS, SUITS, DAMAGES, LOSSES, LIABILITIES, COSTS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES ("CLAIMS"), DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THE

PERFORMANCE OR FURNISHING OF THE WORK/MATERIALS (INCLUDING, BUT NOT LIMITED TO, BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR LOSS OR DAMAGE TO PROPERTY), WHETHER FORESEEN OR UNFORESEEN.

(b) Notwithstanding the foregoing provisions of Paragraph 10(a), with respect to each Indemnified Party individually (but without affecting Contractor/Supplier's obligations under Paragraph 10(a) to other Indemnified Parties), Contractor/Supplier shall not be required to indemnify, defend, protect or hold harmless such Indemnified Party only to the extent that such Claims (x) are caused by (1) the negligence or fault, or breach or violation of a statute, ordinance, governmental regulation, standard or rule, by such Indemnified Party, its agents, employees or any third party under the control or supervision of such Indemnified Party or (2) as to Owner, a breach of this Agreement by Owner and (y) are not covered by the provisions of Paragraph 10(c) below. For purposes of this Paragraph 10(b), Contractor/Supplier agrees that (i) Architect; (iii) each other design professional; (iv) the structural, mechanical, electrical, plumbing, civil and other engineers; and (v) other consultants that are engaged by Owner or any lender in connection with the Site are not under the control or supervision of Owner or any lender providing financing to Owner.

(c) NOTWITHSTANDING ANY LIMITATION ON INDEMNITY OBLIGATIONS IN PARAGRAPH 10(B) ABOVE, CONTRACTOR/SUPPLIER AGREES TO ASSUME THE ENTIRE LIABILITY FOR, AND INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS ALL OF THE INDEMNIFIED PARTIES FROM, ALL CLAIMS FOR PERSONAL INJURY OR DEATH SUFFERED BY CONTRACTOR/SUPPLIER'S OWN EMPLOYEES AND BY THE EMPLOYEES OF ANY SUBCONTRACTORS OR SUB-SUBCONTRACTORS, WHETHER DUE IN PART TO THE INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF ANY OF THE INDEMNIFIED PARTIES OR OTHERS, AND WHETHER ANY OF THE INDEMNIFIED PARTIES OR OTHERS HAS STRICT LIABILITY THEREFOR; AND WAIVES ANY LIMITATION OF LIABILITY DEFENSE BASED UPON THE WORKER'S COMPENSATION ACT, COURT INTERPRETATIONS OF SAID ACT OR OTHERWISE.

(d) The Contractor/Supplier's obligations under this Paragraph to provide a defense shall be with attorneys approved by the Owner. All of the Contractor/Supplier's obligations under this Paragraph shall survive the termination or other expiration of this Agreement.

11. PARKING. All vehicles belonging to Contractor/Supplier, its employees, subcontractors and suppliers, shall be parked only in areas designated and approved in advance by the University.

12. COMPLIANCE WITH LAW. The Contractor/Supplier shall be responsible and liable for complying with all applicable federal, state and local statutes, rules, regulations, codes, ordinances, orders and other requirements (collectively, the "Laws") in connection with the performance or furnishing of the Work/Materials. Without limiting the foregoing, the Contractor/Supplier specifically agrees to comply with all applicable Laws regarding non-discrimination and affirmative action. Contractor/Supplier further agrees not to utilize any person in the performance or furnishing of the Work/Materials who is registered as a sex offender. Contractor/Supplier shall be liable for losses, fines or penalties sustained or suffered by the University resulting from a violation of this provision.

13. PERMITS/NOTICES. Unless otherwise provided for in this Contract, the Contractor/Supplier shall (a) procure and pay for all federal, state and local permits, certifications, inspections and approvals required for the proper performance or furnishing of the Work/Materials and (b) comply with and give and post all notices required under any applicable Law relating to performance or furnishing of the Work/Materials, including, but not limited to, OSHA 29 CFR 1910 and 1926 and the City of Houston Fire Code and Building Code.

14. HEALTH AND SAFETY. To the extent implicated by the nature of the Work/Materials, Contractor/Supplier shall be responsible and liable to the University for initiating, maintaining and supervising all health and safety measures necessary or desirable in connection with the proper performance or furnishing thereof and in complying with any applicable health and safety regulations and policies of the University.

15. ENVIRONMENTAL MATTERS. Unless otherwise specifically provided for in this Contract, Contractor/Supplier shall (a) immediately notify the University if Contractor/Supplier becomes aware or suspects the presence of any hazardous or regulated substance at the Site and (b) not use, release, alter, modify, remove, transport or dispose of any hazardous or regulated substance in, on, under or about the Site without the prior written consent of the University. The phrase "hazardous or regulated substance" shall include asbestos, polychlorinated biphenyl (PCBs) and such other substances (1) that are referred to as "hazardous substances" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, or under any other federal, state or local statute, rules, regulations, codes or ordinances, or (2) that are in such quantities or concentrations as could (A) constitute a hazard to health or the environment, (B) be required to be cleaned up or otherwise remediated, or (C) result in requirements of public notice or recordation or other requirement in lieu of remediation.

16. UNIVERSITY POLICIES, PROCEDURES AND GUIDELINES. The Contractor/Supplier shall, in connection with the performance or supplying of the Work/Materials, comply with the following policies, procedures and guidelines of the University, copies of which are available to Contractor/Supplier on the University's website:

- (a) Rice University Procedures for Fire Prevention During and Following the Cutting and Welding Processes;
- (b) Rice University Power and Mechanical Lockout Procedures;
- (c) Rice University's policy regarding drugs;
- (d) Rice University's policy regarding weapons;
- (e) Rice University's policy regarding the use of tobacco products;
- (f) Rice University's Equal Employment Opportunity/Affirmative Action Policy; and
- (g) Rice University's guidelines regarding cart use.

17. **INDEPENDENT CONTRACTORS.** The Contractor/Supplier shall be an independent contractor in the performance of this Contract.

18. **NO ASSIGNMENT BY CONTRACTOR/SUPPLIER.** The Contractor/Supplier shall not assign its rights or obligations under this Contract, in whole or in part, without the prior written consent of the University.

19. **NAME OR LOGO USE.** The Contractor/Supplier shall not use the name or logos of the University or any of its subsidiaries in any manner or media (including, but not limited to, press releases, promotions, advertisements or solicitations), in each case, without the prior written approval of the University.

20. **UTILITY OUTAGES AND ROAD OBSTRUCTIONS.** The Contractor/Supplier shall not cause any utility outages or tie-ins, any parking lot or road obstructions or any other interferences to the normal operation and use of the Site without the prior written consent of the University.

21. **SURVIVAL.** Any agreements or obligations of Supplier/Contractor that by their nature are to be performed after the expiration or termination of this Contract, including, without limitation, the agreement of indemnity set forth in Paragraph 10 above, shall survive any expiration or termination of this Contract.

22. **GOVERNING LAW.** This Contract shall be governed by and construed under the laws of the State of Texas, without regard to the conflicts or choice of law principles thereof. The parties specifically consent to the jurisdiction of the State of Texas, and agree that any court of competent jurisdiction sitting in the County of Harris, State of Texas, shall be an appropriate and convenient place of venue to resolve any dispute with respect to this Contract.

23. **CONSTRUCTION.** The parties acknowledge that each has been given an opportunity to have this Contract and the attachments hereto reviewed by an attorney of its own selection, and agree that the rule of construction that ambiguities in a document shall be construed against the party that drafted the same shall not be applied in interpreting this Contract. The headings and captions used in this Contract are for convenience of reference only, and shall not be construed, expressly or by implication, so as to affect the meaning or interpretation of any of the provisions of this Contract.

24. **BUSINESS DAY.** The term "business day" as used in this Contract shall mean a day that is not a Saturday, Sunday or legal holiday in the State of Texas.

[End of text.]

ATTACHMENT 4

RICE UNIVERSITY INSURANCE REQUIREMENTS

FOR USE WITH RICE UNIVERSITY SHORT FORM CONTRACT

<u>Schedule of Insurance</u>	<u>Limits of Liability</u>	
Commercial General Liability		
General Aggregate	\$2,000,000	
Products/Completed Operations Aggregate	\$1,000,000	
Each Occurrence	\$1,000,000	
Personal and Advertising Injury	\$1,000,000	
Damage to Rented Premises	\$ 100,000	
Medical Payments	\$ 5,000	
Automobile Liability		
Insures all owned, hired and non-owned vehicles with limits of not less than the following:		
Bodily Injury and Property Damage	\$1,000,000	Each Accident
Excess Liability		
Unless waived by Owner	\$5,000,000	Each Occurrence
	\$5,000,000	Aggregate
Workers Compensation and Employers Liability Insurance		
Accident	\$1,000,000	Each Accident
Disease	\$1,000,000	Each Employee
Disease	\$1,000,000	Policy Limit
Professional Liability		
Unless waived by Owner	\$1,000,000	Per Claim
	\$3,000,000	Aggregate
Pollution Liability		
Unless waived by Owner		
(If work involves asbestos, lead paint, hazardous substances or other pollutants)	\$1,000,000	Each Occurrence
	\$1,000,000	Aggregate

Required Endorsements:

The aforementioned insurance policies shall bear the following:

- 1) **Endorsements waiving rights of subrogation** against William Marsh Rice University on the General Liability, Automobile Liability, [Excess Liability] and Workers Compensation policies.
- 2) Commercial General Liability, Automobile Liability insurance and [Excess Liability] policies shall bear endorsements **naming William Marsh Rice University as an Additional Insured.**
- 3) Endorsement providing thirty (30) day written notice of cancellation to William Marsh Rice University.

Certificates of Insurance and copies of requested endorsements shall be filed with Rice University prior to commencement of the work and must be approved by Eno Oregbesan, Director of Risk Management MS-670, William Marsh Rice University, P.O. Box 1892, Houston, Texas 77251-1892.

ATTACHMENT 5

CONDITIONAL WAIVER AND RELEASE

ON PROGRESS PAYMENT

FOR USE WITH RICE UNIVERSITY SHORT FORM CONTRACT

[Form of release to be obtained from Consultant, Contractor/Supplier, Subcontractor or Supplier to a Subcontractor]

Project _____
Job No. _____ PO # _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$ _____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of William Marsh Rice University, a Texas non-profit corporation (owner) located at _____ (location) to the _____ following the _____ extent: _____ (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date _____, 20_____.

By _____ (Company name)

(Signature)
(Title)

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____,
20____, by _____
_____ *[insert name of person executing document]*, the _____

_____ *[insert title of person executing instrument]* of _____
_____ *[insert name of entity]*, a _

_____ *[if an entity, describe type of entity, such as "corporation",
"partnership", etc., including the name of the state under whose jurisdiction the entity was created]* on behalf of said _____
_____ *[repeat
name of entity]*.

Notary Public in and for the State of Texas

Printed Name of Notary

My commission expires: _____

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____,
20____, by _____
_____ [insert name of person executing document], the _____
_____ [insert title of person executing instrument] of _____
_____ [insert name of entity], a _____
_____ [if an entity, describe type of entity, such as "corporation",
"partnership", etc., including the name of the state under whose jurisdiction the entity was created] on behalf of said _____
_____ [repeat
name of entity].

Notary Public in and for the State of Texas

Printed Name of Notary

My commission expires: _____