



GENERAL CONTRACTOR AGREEMENT
(COST PLUS FEE)

This General Contractor Agreement (the "Agreement") is made and effective as of _____, 20____("Effective Date") by and between (General Contractor) _____(the "Contractor") and Heartland Dental, LLC (the "Owner"). The Contractor and the Owner may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Owner is the owner of the Property (as defined below); and

WHEREAS, the Owner wishes to engage the Contractor as a general contractor to perform certain Work (as defined below) on the Property for the Owner in accordance with the drawings and specifications attached as Exhibit A hereto and on the terms and conditions set forth below; and

WHEREAS, the Contractor is registered with the state as a contractor, and has a registration number of _____, expiring on _____; and

WHEREAS, the Contractor wishes to perform the Work on the Property in accordance with the drawings and specifications attached as Exhibit A hereto and with the terms of this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW THEREFORE, in consideration of the above recitals and the mutual promises and benefits contained herein, the Parties hereby agree as follows:

1. SCOPE OF WORK.

The Contractor shall furnish all of the necessary materials, tools, machinery, supervision, relocation and, site security and perform all of the work described in Exhibit A hereto (the "Work"), all in accordance with the terms of this Agreement. The Work shall be performed on that certain property located at _____, _____(the "Property"), and as more specifically described in Exhibit A. The Contractor agrees that it will perform the services and provide all materials, for which it is responsible, will accomplish this Work in the manner and in the time stated herein and in accordance with the drawings and specifications attached as Exhibit A hereto, and will provide the deliverable items as required.



2. TIME OF COMPLETION.

The Parties agree that time is of the essence and that the Work to be performed under this Agreement shall therefore start on (or before) _____, _____ and shall be completed to substantial completion on (or before) _____, _____. The maximum project duration from dates above will be defined as the construction time (calendar weeks) period of ____ calendar days (____ calendar weeks). Substantial completion date will be defined as Owners receipt of Certificate of Occupancy from General Contractor.

3. COMPENSATION.

(a) Contract Sum; Payments.

i. Subject to the provisions hereinafter set out, the Owner shall pay to the Contractor for the performance of this Agreement the following items in cash:

1. The actual cost of construction as defined in Section 3(b) below; plus
2. All cost associated with the project superintendent (including but not limited to payroll taxes, workman's compensation, insurance, and 3(c)(ii)) maximum of (\$ _____) per week, plus
3. A fee equal to (____) (%) percent of the cost as described in 3(b) below

ii. If, on completion of the Work, the Contractor has received cash payments in excess of (a) the actual cost of construction, plus (b) the cash fee specified in Section 3(a)(i)(1-3), all such excess shall be refunded to the Owner.

(b) Actual Cost of Construction. The "actual cost of construction," as used in Section 3 (a)(i)(1) above, shall include all items of cost and expense incurred by the Contractor in the performance of this Agreement, including actual costs and actual expenses of labor, materials for construction, subcontractor costs, equipment and fixtures, field engineering, sales taxes, workers' compensation insurance, payroll taxes, contractor's liability insurance, and all other expenses directly incurred in completing the project, but excluding kickbacks, rebates, and discounts received in connection with the construction of the project provided, however, that normal cash discounts (2%) obtained on payments made by the Contractor shall accrue to the Contractor; and excluding any return on or cost of the Contractor's working capital, such return on or cost of working capital being a part of or to be paid from the Contractor's fee or profit, and those items described in Section 3(c) below.

(c) Restrictions on Payment. This amount shall be paid only to the extent that costs are incurred by the Contractor in its performance of the Work in accordance with the provisions of this Agreement and the following:



- i. **Staff Charges.** The Owner agrees to pay the weekly cost of Site Supervision as referred to above in Section 3(a)(i)(2) for the services performed by its employee under the terms of this agreement. Any actual costs above the contracted price will be the sole responsibility of the Contractor. Those costs above Section 3(a)(i)(2) are not subject to reimbursement in anyway by Owner. In the event that the Work is not completed by the dates and/or time period outlined in Section 2 above, the Owner reimbursement for staff personnel shall be discounted by fifty percent (50%).
- ii. **Travel Reimbursable.** The Site Superintendent's travel expenses including but is not limited to lodging/living expenses, food, gas, and other miscellaneous travel expenses. This cost is to be included into Section 3(a)(i)(2).
- iii. **General Conditions Reimbursable.** The Contractor shall be reimbursed for the reasonable and necessary actual direct cost incurred for all site related expenses. These costs include permit costs, business licensing, general liability insurance, workman's compensation (not including Builder's Risk), field office, temporary toilets, miscellaneous postal expenses, final professional photo's, cleaning expenses, dumpster costs, communications for field office, temporary utilities, plan printing & reproduction. Proof of expense (i.e. receipt, statement, etc...) must be provided for reimbursement with the payment application. Impact fees and tap fees are considered reimbursable expense but are listed separately on Exhibit B.
- iv. **General Overhead.** The below listed items shall be included as part of and NOT in addition to the Contractor's Fee (%) as shown on Exhibit B.
 1. Administrative Assistant salaries
 2. Project Management salaries
 3. Expenses of Contractor's Principal office
 4. Overhead and general expenses
 5. Project Management Travel
 6. Expenses due to negligence of the Contractor, subcontractor, or suppliers.
 7. Any violation of laws and fines associated with violations are non-reimbursable.
 8. Profit

4. PROGRESS PAYMENTS.

- (a) **Payments; Invoices.** The Contractor may submit pay request/invoices for progress payment no more frequently than twice a month for Work performed during such period; provided, however, that such invoices shall be submitted at least fifteen (15) days before the date payment is desired. Pay request/invoices shall set forth total



project costs incurred and shall be in a format consistent with the cost categories set forth in Exhibit B. Pay request/invoices shall provide reasonable documentation for the above to provide evidence of costs incurred, including:

- (1) Staff charges
- (2) Travel Reimbursable
- (3) General Conditions Reimbursable
- (4) All direct costs shall be itemized on the invoice and supported by documentation, such as subcontractor invoices, vendor invoices, or other applicable documentation.

The Owner shall pay to the Contractor, within the prescribed time after receipt of an invoice for a progress payment, 90% of the amount so requested, unless the Owner determines that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement.

(b) **Affidavit of Contractor.** Prior to each payment by the Owner, the Contractor MUST provide a partial lien waiver and upon request of final payment a final lien waiver is to be provided to the Owner. The Contractor shall affirm in writing that there are no liens or claims filed against the Contractor or the Owner related to materials, labor, or services supplied on this or any other project in which the Contractor was or is currently involved. No payment shall be made to the Contractor if a lien has been filed with respect to the Work that is the subject of this Agreement.

(c) **Withholding of Payments.** Payment of the Contract Price may be withheld because of:

- (1) defective Work not remedied;
- (2) continuing failure to perform the Work in accordance with this Agreement or these general conditions;
- (3) liens or claims filed; or

(d) **Final Payment.** Upon final acceptance by the Owner of all deliverables contained in Exhibit A & B, the Contractor shall submit an pay request/invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, the Owner may require. All invoices for final payment hereunder must, under any and all circumstances, be received by the Owner within fifteen (15) days after the request for final payment by the Contractor provided that the Work be then satisfactorily performed, and further subject to receipt by the Owner of the same affirmation relative to existing liens or claims against the Contractor as set forth in Section 4(b) above. The Owner shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the maximum amount payable pursuant to Section 3 above, less all progress payments previously made to the Contractor with respect thereto unless subject to the maximum commitment as stated in Section 4(h)



below. Upon final payment, the Contractor shall provide to the Owner a final release of lien stating that the Contractor has no further claims or liens against the Owner for materials or labor supplied under this Agreement.

- (e) Waiver of Owner's Claims. The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:
 - (1) unsettled liens;
 - (2) faulty or defective work appearing after substantial completion;
 - (3) failure of the Work to comply with the requirements of Exhibit A.
- (f) Waiver of Contractor's Claims. The acceptance of the final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final payment.
- (g) Maintenance of Financial Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of two (2) years after acceptance of the Work, full and detailed books, accounts, and records pertaining to the performance of the Agreement and the actual cost of construction, including without limitation, all bills, invoices, payrolls, subcontracting efforts, and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance.
- (h) Maximum Amount Payable. The Owner reserves the option of requesting the maximum aggregate amount payable by the Owner to the Contractor hereunder as \$_____. The Owner shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.
- (i) Audit Rights. The Owner shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained, and preserved pursuant to Section 4(g) above. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein that are found by the Owner on the basis of any audit of the Contractor by the Owner or its agents not to constitute an allowable charge or cost hereunder.
- (j) Requirement on Subcontracts. The Contractor shall include in all subcontracts, equipment leases, and purchase orders a provision requiring the subcontractor, equipment lessor, or supplier to certify its costs incurred in connection with the Work, in



the event the Owner determines there is an identity of interest between the Owner or the Contractor and any such subcontractor, equipment lessor, or supplier.

- (k) Payment Failure. If the Owner shall fail to make any payment within 10 days of due date, except for conditions identified in Section 4(c) above, the Contractor may cease Work; provided, however, the Contractor shall resume performance of the Work and other obligations after payment or other resolution of any dispute.

5. LICENSES AND PERMITS.

The Contractor shall comply with all state and local licensing and registration requirements for the type of work performed. The Contractor shall obtain and, at its expense, pay for any and all licenses or permits required by law to accomplish any Work required in connection with this Agreement, agrees to hold the Owner harmless for any violations, and shall accordingly indemnify the Owner.

6. SELF PERFORMANCE.

The term "self performance" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

All wages of construction workers through "self-performance" by the General Contractor to perform the construction of the work at the site or off-site will require Owner's approval at an agreed upon cost, cost similar, equal or below the cost proposed from a third party contractor or subcontractor, unless otherwise approved in writing by Owner's.

If any of the costs to be reimbursed arise from a transaction between the Contractor and self-performance, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorized the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods and service from some person or entity other than a related party.

7. PROJECT MANAGEMENT.

- (a) Contractor shall record the progress of the Project. On a weekly basis, or otherwise as agreed to by the Owner, the Contractor shall submit written progress reports to the Owner showing percentages of completion and other information required by the



Owner. The Contractor shall also keep, and make available to the Owner, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

- (b) Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner and shall provide this information in its weekly reports to the Owner in accordance with Section (a) above.

8. REPRESENTATIONS AND WARRANTIES.

1. The Parties each hereby represent and warrant as follows:

- (1) Each Party has full power, authority, and right to perform its obligations under the Agreement.
- (2) This Agreement is a legal, valid, and binding obligation of each Party, enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors' rights generally and equitable remedies).
- (3) Entering into this Agreement will not violate the charter or bylaws of either Party or any material contract to which that Party is also a party.
- (4) The drawings and specifications attached to this Agreement as Exhibit A are the final drawings and specifications of the Work, and form an integral part of this Agreement.
- (5) The Contractor may, in its discretion, engage licensed subcontractors to perform the Work; provided, however, that the Contractor must fully pay any such subcontractor and, in all instances, will remain responsible for the completion of this Agreement and the Work.

2. The Contractor hereby represents and warrants as follows:

- (1) The Work shall be performed in a workman-like manner, according to standard industry practices and in compliance with all building codes and other applicable laws; provided, however, that if other standards or requirements are set forth in any attached plans and specifications, those other standards or requirements shall control.



- (2) The Work shall be performed by individuals duly licensed and authorized by law to perform said work, to the extent required by law.
 - (3) The Contractor shall provide the Owner with appropriate releases or waivers of liens at the time of payment for any Work performed.
 - (4) The Contractor shall remove any debris or other garbage from the Property, and leave the Property in broom clean condition after the Work has been completed.
 - (5) The Contractor is responsible for paying all ordinary and necessary expenses of its staff.
 - (6) The Contractor warrants that it is adequately insured for injury to its employees and others incurring loss or injury as a result of the acts of the Contractor or its employees or subcontractors and shall provide the Owner with proper certificates of insurance. The Contractor acknowledges that it is solely responsible for providing insurance coverage for itself and its staff. Owner agrees to provide Builders Risk coverage for the given project.
 - (7) The Contractor shall obtain all necessary approvals from local authorities or other statutory bodies concerned for the Work and shall hold the Owner harmless for any violations and accordingly indemnify the Owner.
 - (8) The Contractor shall obtain insurance to protect itself against claims for property damage, bodily injury, or death due to its performance under this Agreement.
3. The Owner hereby represents and warrants as follows:
- (1) The Owner is the registered owner of the Property.
 - (2) The Owner will make timely payments of amounts earned by the Contractor under this Agreement.
 - (3) The Owner shall notify the Contractor of any changes to its procedures affecting the Contractor's obligations under this Agreement at least 10 days prior to implementing such changes.
 - (4) The Owner shall provide such other assistance to the Contractor as it deems reasonable and appropriate.



9. INDEMNIFICATION, INSURANCE, AND PROTECTION OF PROPERTY.

- (a) Indemnification Negligence of Contractor or Subcontractor. Contractor shall defend, indemnify and hold harmless Owner, its subsidiaries, the professional corporation(s), professional association(s), professional limited liability corporation(s) and professional service corporation(s) operating on the Property at any time during Owners' ownership of the Property, and their directors, officers, employees and agents from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards and damages of any kind and nature whatsoever, (including but not limited to and without limitation injury to or death of employees of Contractor or any subcontractor thereof) expenses, costs of litigation and counsel fees related thereto or incident to establishing the right to indemnification, arising out of or in any way related to this Contract, the performance thereof by Contractor or any subcontractor thereof or other third parties, including, without limitation, the provision of Services, personnel, facilities, equipment, support, supervision or review. In no event shall Contractor's obligations hereunder be limited to the extent of any insurance available to or provided by Contractor or any subcontractor thereof. Contractor expressly waives any immunity under industrial insurance, whether arising out of statute or other source, to the extent of the indemnity set forth in this paragraph (a).
- (b) Commercial General Liability. If Contractor or any subcontractor thereof will be performing work on Owner's premises, Contractor shall carry and maintain, and ensure that all subcontractors thereof carry and maintain, throughout the period when work is performed and until final acceptance by Owner, Commercial General Liability insurance with available limits of not less than one million dollars (\$1,000,000) per occurrence for bodily injury and property damage combined. Such insurance shall contain coverage for all premises and operations, broad form property damage, contractual liability (including, without limitation, that specifically assumed under paragraph (a) herein) and goods and completed-operations insurance with limits of not less than one million dollars (\$1,000,000) per occurrence for a minimum of 24 months after final acceptance of the work by Owner. Such insurance shall not be maintained on a per-project basis unless the respective Contractor or subcontractor thereof does not have blanket coverage.
- (c) Automobile Liability. If licensed vehicles will be used in connection with the performance of the work, Contractor shall carry and maintain, and ensure that any subcontractor thereof who uses a licensed vehicle in connection with the performance of the work carries and maintains, throughout the period when work is performed and until final acceptance by Owner, Business Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed or otherwise, with available limits of not less than one million dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage.



- (d) Workers' Compensation and Employers' Liability. Throughout the period when work is performed and until final acceptance by Owner, Contractor shall, and ensure that any subcontractor thereof shall, cover or maintain insurance in accordance with the applicable laws relating to Workers' Compensation (and Employers' Liability with limits not less than one million dollars (\$1,000,000) per incident) with respect to all of their respective employees working on or about Owner's premises. If Owner is required by any applicable law to pay any Workers' Compensation premiums with respect to an employee of Contractor or any subcontractor, Contractor shall reimburse Owner for such payment.

- (e) Certificates of Insurance. Prior to commencement of the work, Contractor shall provide for Owner's review and approval certificates of insurance reflecting full compliance with the requirements set forth in paragraphs (b) Commercial General Liability, (c) Automobile Liability and (d) Workers' Compensation. Such certificates shall be kept current and in compliance throughout the period when work is being performed and until final acceptance by Owner, and shall provide for 30 days advance written notice to Owner in the event of cancellation. Failure of Contractor or any subcontractor thereof to furnish certificates of insurance, or to procure and maintain the insurance required herein or failure of Owner to request such certificates, endorsements or other proof of coverage shall not constitute a waiver of Contractor's or subcontractor's obligations hereunder.

- (f) Self-Assumption. Any self-insured retention, deductibles and exclusions in coverage in the policies required under this article shall be assumed by, for the account of and at the sole risk of Contractor or the subcontractor which provides the insurance and to the extent applicable shall be paid by such Contractor or subcontractor. In no event shall the liability of Contractor or any subcontractor thereof be limited to the extent of any of the minimum limits of insurance required herein.

- (g) Protection of Property. Contractor assumes, and shall ensure that all subcontractors thereof and their respective employees assume, the risk of loss or destruction of or damage to any property of such parties whether owned, hired, rented, borrowed or otherwise. Contractor waives, and shall ensure that any subcontractor thereof and their respective employees waive, all rights of recovery against Owner, its subsidiaries and their respective directors, officers, employees and agents for any such loss or destruction of or damage to any property of Contractor, any subcontractor or their respective employees. At all times Contractor shall, and ensure that any subcontractor thereof shall, use suitable precautions to prevent damage to Owner's property. If any such property is damaged by the fault or negligence of Contractor or any subcontractor thereof, Contractor shall, at no cost to Owner, promptly and equitably reimburse Owner for such damage or repair or otherwise make good such property to Owner's satisfaction. If Contractor fails to do so, Owner may do so and recover from Contractor the cost thereof.



10. WAIVER OF LIABILITY.

If the Contractor is injured while performing the work specified under this Agreement the Owner shall be exempt from liability for those injuries to the fullest extent allowed by law.

11. WARRANTY.

- (a) **Correction of Defective Work.** The Contractor shall promptly correct any Work rejected as defective or as failing to conform to Exhibit A, whether observed before or after substantial completion and whether or not fabricated, installed, or completed, and shall correct any Work found to be defective or nonconforming within a period of one (1) year from the date of substantial completion of the Agreement or within such longer period of time as may be prescribed by law. The Contractor shall correct these mistakes within ten (10) business days after receiving the Owner's written instructions and at its own cost (unless otherwise agreed by the Parties); provided, however, that the Contractor shall not be required to correct at its own cost any damage that occurred after completion of the Work, unless such damage occurred or resulted from defects arising prior to completion of the Work.
- (b) **Normal Wear and Tear Only.** The Contractor shall only be responsible for damages sustained by the Owner and shall under no circumstances be responsible for damages or losses caused by wear and tear, misuse, neglect, negligence, abuse, or accident, or because of or arising from any risk insured against in terms of the owner's insurance policies normally issued by a reputable insurance company for commercial properties. The Contractor shall under no circumstances be liable for any consequential loss or damage.

12. TERMINATION.

This Agreement may be terminated:

- (a) By Owner on provision of fifteen (15) days' written notice to the Contractor, with or without cause.
- (b) By either Party for a material breach of any provision of this Agreement by the other Party, if the other Party's material breach is not cured within ten (10) days of receipt of written notice thereof.
- (c) By the Owner, if the Contractor defaults or persistently fails or neglects to carry out the Work or fails to perform any provision of the Agreement after five (5) days' written notice to the Contractor. Without prejudice to any other remedy the Owner may have, the Owner may make good such deficiencies and may deduct the cost thereof from the



payment due the Contractor or, at the Owner's option, may terminate the Agreement and take possession of the site and of all materials and equipment.

- (d) By the Owner at any time and without prior notice, if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directives of the Owner, or is guilty of serious misconduct in connection with performance under this Agreement.

In the event of termination not the fault of the Contractor, the Company shall promptly pay the Contractor according to the terms of Exhibit A for services rendered before the effective date of the termination. The Contractor acknowledges and agrees that no other compensation, of any nature or type, shall be payable hereunder following the termination of this Agreement.

13. ACCESS TO WORK.

The Owner, the Owner's representatives, and public authorities shall at all times have access to the Work.

14. NOTICE OF RIGHT TO CANCEL.

The owner has an unconditional right to cancel the contract until midnight of the third (3rd) business day after the agreement is signed. Cancellation must be done in writing.

15. SUPPLEMENTARY TERMS OF THE AGREEMENT.

The Owner and the Contractor hereby agree to the following additional terms:

- 1. Exhibit A – Drawings & Specifications
- 2. Exhibit B – Contractor Proposal Form
- 3. Exhibit D – Preferred General Contractor Requirements
- 4. Exhibit E – Construction Schedule
- 5. _____
- 6. _____
- 7. _____
- 8. _____

16. ASSIGNMENT.

The rights and the duties of the Contractor under this Agreement are personal, and may not be assigned or delegated without the prior written consent of the Owner. The Owner may assign its rights and duties under this Agreement with the prior written consent of the Contractor.



17. SUCCESSORS AND ASSIGNS.

All references in this Agreement to the Parties shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.

18. NO IMPLIED WAIVER.

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

19. NATURE OF RELATIONSHIP.

The Contractor is not an employee of the Owner; the Contractor is working in its capacity as an independent contractor. The Contractor agrees to hold the Owner harmless and indemnify the Owner for any claims, including (but not limited to) liability insurance, workers' compensation, and tax withholding for the Contractor's employees.

20. NOTICE.

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return receipt requested) to the respective Party as follows:

If to the Owner:

If to the Contractor:



21. CHANGE ORDERS.

All changes and/or deviations in the Work ordered by the Owner must be in writing as a change order, a form of which is attached as Exhibit C hereto and made part hereof. The Contract Price will be increased or decreased accordingly by the Parties' agreement. Any claims that the Contract Price should be increased based on changes and/or deviations in the Work must be presented to the Owner by the Contractor in writing. The Owner's written approval of such Contract Price increase must be obtained by the Contractor before any change and/or deviation in the Work is started. The valuation of the Contract Price change will be assessed on the basis of the valuation of similar work included in this Agreement. The change order compensation will be equal to the percent in 3(a)(i)(3) and described in 3(b) as actual cost of construction.

22. OWNERSHIP OF DRAWINGS AND OTHER ITEMS.

All drawings, reports, designs, sketches, working drawings, shop drawings, documents, certificates, plans, specifications, estimates, memoranda, analyses, calculations, models and other tangible evidence of the Contractor's work product prepared in connection with the Work shall become and remain the sole property of the Owner. The Contractor may retain copies of its work product for its records; provided however, that any use thereof (other than with respect to the Work) without the written consent of the Owner is prohibited. Any devices (other than equipment or devices which constitute part of the Work) or methods now being used in the marketplace, and incorporated into the project, are not considered to be property of the Owner. Innovative construction methods or mechanical devices developed by the Contractor or its subcontractors and used in connection with the Work are not considered the property of the Owner unless such methods or devices were developed by the Owner or the Owner's separate contractors.

23. TYPES OF MATERIALS.

All materials used by the Contractor in performing the work shall be new, in compliance with all applicable laws and codes, and covered by a manufacturer's warranty (if appropriate).

24. OWNERSHIP OF MATERIALS.

Any materials that are unfixed and required to perform the Work and that are delivered to the Property under this Agreement shall remain the property of the Contractor until they have been paid for by the Owner.

25. MATERIALS IN SHORT SUPPLY.

If any of the materials set out in Exhibit A hereto are in short supply or are unavailable for an unreasonable amount of time, the Owner shall select alternative material of similar quality from alternative (and readily available) materials proposed by the Contractor. The responsibility for



paying any difference in price between the original materials and the alternative materials shall lie with the Owner.

26. MODIFICATION.

No amendment, addendum, change, or modification of this Agreement shall be valid unless in writing and signed by both Parties.

27. APPLICABLE LAW.

This Agreement and the rights and obligations of the parties hereunder shall be construed and governed by the laws of the state of Illinois.

28. WAIVER OF JURY TRIAL.

To the extent not prohibited by applicable law which cannot be waived, each party hereto hereby waives and covenants that it will not assert (whether as plaintiff, defendant or otherwise) any right to trial by jury in any forum in respect of any issues or action, claim, cause of action or suit (in contract, tort or otherwise), inquiry proceeding or investigation arising out of or based upon this agreement or the subject matter hereof, in each case whether now existing or hereafter arising. Each party hereto acknowledges that it has been informed by the other party hereto that this Section twenty-eight (28) constitutes a material inducement upon which they are relying and will rely in entering into this agreement. The parties agree that any of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained-for agreement between the parties to irrevocably waive their respective right to a trial by jury in any proceeding whatsoever between them relating to this agreement or the subject matter hereof.

29. BINDING ARBITRATION.

If and only to the extent Section twenty-eight (28) is not enforceable by a court of competent jurisdiction, any and all disputes, controversies, claims, or demands arising out of or relating to this Agreement or any provision hereof, or in any way relating to the relationship between Owner and Contractor, whether in contract, tort or otherwise, at law or in equity, for damages or any other relief, shall be resolved by binding arbitration pursuant to the Federal Arbitration Act. No claim may be arbitrated on a class-action basis, and neither Owner nor Contractor shall have the right to participate in the arbitration as a representative or member of any class of claimants or any person or entity not a party to this Agreement. Any such arbitration proceeding shall be conducted in Illinois. In any arbitration the parties shall be responsible for their own costs and expenses of arbitration, including their own attorneys' fees. This arbitration provision shall be enforceable in either federal or state court in Texas pursuant to the substantive federal laws established by the Federal Arbitration Act. Any party to any award rendered in such arbitration proceeding may seek a judgment upon the award and any federal or state court in Illinois having jurisdiction may enter that judgment. Notwithstanding the



foregoing, nothing shall prevent either party from seeking temporary injunctive or other equitable relief to maintain the status quo until the matter in controversy is arbitrated or to determine 'arbitrability' or to enforce arbitration hereunder.

30. COUNTERPARTS/ELECTRONIC SIGNATURES.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

31. SEVERABILITY.

Whenever possible, each provision of this Agreement, will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

32. ENTIRE AGREEMENT.

This Agreement, constitutes the final, complete, and exclusive statement of the agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the Parties.

33. HEADINGS.

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

OWNER

HEARTLAND DENTAL, LLC

By: _____
Name: Chad Armstrong
Title: Director of Construction

CONTRACTOR

By: _____
Name: _____
Title: _____



EXHIBIT A
DRAWINGS AND SPECIFICATIONS

(Attach to Agreement)

EXHIBIT B
CONTRACTOR PROPOSAL FORM

(Attach to Agreement)

EXHIBIT C
FORM OF CHANGE ORDER

Change Order No:	
Date:	
Contractor's Name and Address:	Owner's Name and Address:
THE CONTRACTOR AGREEMENT IS HEREBY CHANGED AS FOLLOWS	



Additional Contract Days: (if none, state "NONE"):

ALL OTHER TERMS AND CONDITIONS OF THE CONTRACTOR AGREEMENT THAT ARE NOT CHANGED BY THIS CHANGE ORDER REMAIN IN FULL FORCE AND EFFECT.

PREVIOUS CONTRACT PRICE: \$

REVISED CONTRACT PRICE: \$

ACCEPTANCE

The above prices, specifications, and conditions are satisfactory, and are hereby accepted. The Contractor is authorized to do the work as specified, and the Owner shall make payments as outlined above.

Owner Signature: _____ Date: _____

Contractor Signature: _____ Date: _____



EXHIBIT D

**PREFERRED GENERAL CONTRACTOR
REQUIREMENTS**

The following outlines the expectations that owner have for all Preferred General Contractor that perform work on or in our facilities, existing or new:

1. The Owners believe in order to insure high quality and timeliness on completion of its projects that a Site Superintendent IS REQUIRED to be on site for each of its projects throughout the entire duration of the project.
2. One of our Preferred Architects will be used on this project. All RFI's are to be submitted directly to the corresponding Architect but also attaching the correct Heartland Dental Project Manager.

(Heartland Dental Project Manager)

Architect Firm: _____

Contact: _____

Phone: _____

Email: _____

3. We REQUIRE our Preferred General Contractor to do a thorough preliminary review of the construction documents and provide feedback to the architects. We want to insure that you can build what the architect is designing on the plans and keep the architect from over-engineering the project. We are always open to "Best Practices" from materials to aesthetics.
4. We also REQUIRE a Preferred General Contractor to complete a preliminary site inspection and provide feedback to the owner and Architect of the following items as well as other items the Owner or Contractor may deem relevant:
 - a. Verify location of existing utilities and capacities:
 - i. Water
 - ii. Sanitary
 - iii. Storm Sewer
 - iv. Electric
 - v. Gas
 - vi. Telephone & Cable
 - b. Verify existing conditions of the building or parcel



- c. If a Tenant Build-out, please conduct a preliminary inspection of the premises.
 - d. If parcel, please review for elevation concerns, drainage, etc...
5. If your company is selected and named a Preferred General Contractor, we expect that upon completion of the preliminary design (floor plan, reflected ceiling plan, and equipment plan) you will submit a preliminary construction budget on the project in a form that is attached the Preferred General Contractor Agreement in Exhibit D. We (Heartland Dental & PRDI) accept the liability of a cost plus contract type so that we can PARTNER with our Preferred General Contractors to accomplish all projects in the timeliest manner.
 6. The awarded Preferred General Contractor will provide the final and updated Exhibit B, also known as the Contractor Proposal Form, will be the basis of contract following the Permitted Construction Documents. Any changes, modifications, additions, etc... MUST be issued in written form and approved by the Heartland Dental Project Manager. A Change Order log must be kept by the Preferred General Contractor and submitted to the Owner prior to each request for payment. A final revised Contractor Proposal Form MUST be submitted including all approved Change Orders following completion of the project and prior to final payment. Exhibit C can be used as the written form of Change Orders but is not required.
 7. A Preferred General Contractor is expected to seek out a minimum of three (3) bids per CSI division. Upon receipt of the bids we expect a Preferred General Contractor to share a minimum of three (3) bids with owner for all applicable trades. The bids for each trade must be provided and input into a bid analysis sheet (side by side comparison) for the Owner's review. Between the Owner and Preferred General Contractor, a decision will be made of which subcontractor(s) to use on the various divisions.
 8. The Preferred General Contractor MUST provide a construction schedule outlining the project milestones and expected delivery dates with both the preliminary AND final Contractor Proposal Form.
 9. During the construction process the Preferred General Contractor MUST provide a progress report and photos of the project for the current week and a projection for the following week by noon (CST) on Friday. We expect to be advised in this report whether the project is falling behind, right on pace, or ahead of the original construction schedule provided.
 10. Upon completion of our projects, we REQUIRE the Preferred General Contractor to provide a physical set of as-built construction drawings as well as an O & M manual on the project premises. We also REQUIRE an electronic copy of all O & M manuals (equipment and building system warranties) within thirty (30) days post completion of the project.
 11. Within thirty (30) days prior to completion of the project we REQUIRE our Preferred General Contractors to provide a listing of all the subcontractors used on the project with their contact information as a resource to trouble shoot issues in the future. This includes but is not limited



to at least one contact name, phone number, fax number, cell phone numbers, email address, address information, and the main contact (i.e. superintendent/foreman) that was on-site during the project.

12. We REQUIRE our Preferred General Contractors to be in charge of facilitating the coordination of setup and installation of the digital Panorex x-ray, telephone, cable, and internet service to the project. Coordination with the local phone, cable, and internet vendor, for the electrical needs, mounting needs, locations, conduit provisions, and wiring as needed.

Contact for Low Voltage Cabling Install:

Jordan Hults
Office Systems Supervisor - Office Development Coordinator
Office 217-821-9313
Email jhults@heartland.com

Contact for Digital Panorex X-ray delivery & installation:

Elizsha Darnell
Supplies
Office: 217-540-5100
Email: edarnell@heartland.com

13. We REQUIRE our Preferred General Contractors to make sure that there is electrical service available and provided to building mounted sign(s) and monument sign for the project. This also includes the coordination with the Heartland Dental Marketing Department and the local Sign Provider for the electrical needs, mounting needs, locations, conduit provisions, and wiring as needed.
14. We expect a Preferred General Contractor to make sure that all landscaping is completed and done in a Class A standard, all irrigation is working properly. Service contracts should be provided for 1-year on landscaping, mowing, snow removal (if applicable), and irrigation maintenance to Heartland Dental Project Manager from contractors within 30 days prior to final completion of the project.
15. We expect a Preferred General Contractor, on all projects, to provide a 1-year HVAC Maintenance Agreement. Any proposals needed to accomplish this need to be provided to a HD Project Manager within 30 days prior to completion of the project insuring coverage of the maintenance of the office.



16. We expect a Preferred General Contractors will work with our IT Dept, cabling vendor, and local phone/internet vendor, to salvage the Dmark that is typically within the building. This coordination of salvaging the necessary pieces of equipment is essential in the smooth transition of installation of the new phone lines and system. This situation only applies if we are dealing with existing facilities and/or bank properties.

Contact for Phone, Internet, Cable Provider information / Install:

Mike Klauser Support

Technician Office:

217-540-5117

Email: mklauser@heartland.com

17. On all projects, the Preferred General Contractors MUST facilitate professional photos being taken of the building and electronic high-resolution photos sent within 30 days of project completion to the Heartland Dental Project Manager. Please refer to photo standards sent by HD Project Manager.
18. A Preferred General Contractors MUST hang pictures, other wall décor, and misc. items as necessary for smooth transition for the opening of the office.
19. Currently Heartland will provide casework & countertops, interior decorative light fixtures, flooring materials & adhesives, appliances, plumbing fixtures, dental equipment and dental equipment installation. Refer to list below of materials supplied by Heartland Dental:

(1) Casework and Countertops

1. Materials to be furnished by Heartland Dental, installation quote by GC
2. Provided by Stevens Industries

Contact: Jason Woomer

Office: (217)857-3119

Email: jasonw@stevensind.com

Contact: Lisa Koerner

Office: (217)857-7193

Email: lisak@stevensind.com

(2) Patcraft Carpet, Resilient tile and adhesive

Materials to be furnished by HD, installation by GC, and coordinate quantities needed with contacts below.

Provided by Patcraft

Contact: Melanie Johnson

Office: (800)367-5504

Email: Melanie.johnson@shawinc.com



Contact: Todd Heilman
Cell: (314)640-6521
Email: todd.heilman@patcraft.com

(3) All Tile, Grout, & Schluter Strips

1. Provided by HD, installed by GC
2. Quantities and delivery date to be provided by GC 30 days prior to installation.
Contact: Jake Fluchel at ISC Surfaces
Office: (314) 812-5915
Email: jfluchel@iscsurfaces.com

(4) Doors, Trim, & Hardware

1. Provided by HD, installed by GC
2. Quantities and delivery date to be provided by GC 45 days prior to installation
Contact: Bill Mette at Effingham Builders Supply
Office: (217) 347-0567
Email: bill@go2ebs.com

(5) Dental Equipment

1. Provided and installed by Henry Schein to be coordinated by GC.
Contact: Tom Schneider
Cell: (314)749-5995
Email: thomas.schneider@henryschein.com

(6) Decorative Lighting Fixtures

1. Provided by HD, installed by GC
2. Quantities (refer to lighting fixture schedule) and delivery date to be provided by GC 30 days prior to installation.
Contact: Pam Huffines
Office: (618) 224-7314
Email: pamh@lightbriterdistributing.com

(7) General Lighting Fixtures

1. Provided by HD, installed by GC
2. Quantities (refer to lighting fixture schedule) and delivery date to be provided by GC 30 days prior to installation.
Contact: Meghan Donoghue
Office: (860) 767-0110 ext 232
Email: mkd@sslighing.com



(8) Plumbing Fixtures

1. Provided by HD, installed by GC
2. Quantities (refer to plumbing drawings) and delivery date to be ordered online by GC 30 days prior to installation.

Contact: Michael Payne

Office: (636) 519-7299

Email: michael.payne2@ferguson.com