

**ARCHITECT/ENGINEER AGREEMENT  
BETWEEN  
HOUSTON COMMUNITY COLLEGE SYSTEM,  
OWNER,  
AND**

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THIS AGREEMENT made effective on \_\_\_\_\_, 20XX, by and between Houston Community College System ("Owner"), a public community college district organized under Chapter 130 of the Texas Education Code, whose main office address is at 3100 Main Street, 12th floor, Houston, Texas 77002, and \_\_\_\_\_ ("A/E"), whose main office address is \_\_\_\_\_ (individually, "Party" and collectively, "Parties").

**RECITALS**

WHEREAS, The A/E agrees to perform professional design services, on a project by project basis, (individually and collectively referred to as the "Project") as hereinafter set forth in the Agreement and the Project Addenda thereto; and

WHEREAS, the Owner agrees to pay the A/E for such services a fee in accordance with the terms and conditions hereinafter stated.

NOW, THEREFORE, the Owner and the A/E, for the consideration hereinafter named, agree as follows:

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## TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND PROJECT A/E

### ARTICLE 1

#### GENERAL INFORMATION

1.1 This Agreement is intended to set forth the terms and conditions of the A/E's services for all projects assigned to A/E by Owner related to the Project. Upon execution of this Agreement, the A/E shall provide, upon Owner's request and prior to commencement of the Basic Services, all services necessary to develop the program for each Project ("Programming Services"), as defined in Section 1.5 below. The Programming Services shall constitute Additional Services. Upon completion of the Programming Services, if any, for a Project assigned to A/E, and prior to commencement of the Basic Services, Owner and A/E shall develop a Project Addendum ("Project Addendum") in the form attached hereto as **Exhibit A**. The Project Addendum shall be executed by A/E and Owner's representative, setting forth the following information for each Project:

1.1.1 Initial Information for the Project.

1.1.2 A schedule for the performance of the A/E's services for the Project. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the A/E or Owner.

1.1.3 The initial Construction Cost Limitation for the Project.

1.1.4 The A/E's fee for the Project, to be stated as a percentage of the initial Construction Cost Limitation.

1.1.5 An allowance for A/E's reimbursable expenses for the Project.

1.1.6 A/E's Senior Principal and sub-consultants for the Project.

1.1.7 Any special provisions that will take precedence over the terms and conditions stated in this Agreement.

1.2 The Owner and A/E may rely on the Project Addendum as a full part of this Agreement as if fully stated herein. Both parties recognize that such information may materially change, and in that event, the Owner and the A/E shall appropriately adjust the Project Addendum by mutual agreement. The professional services which are the subject of this Agreement shall be conducted so that the design will call for construction of the Project for a cost not to exceed the Construction Cost Limitation set forth in the Project Addendum. The A/E shall be responsible for managing the design to stay within this Construction Cost Limitation.

1.3 The initial Construction Cost Limitation sum stated in the Project Addendum shall be the basis for computing the A/E's Basic Services fee, and shall remain constant throughout a Project unless changed by mutual agreement between all parties, without regard to the Construction Contract price. Fees for multi-stage construction shall be calculated in accordance with provisions in Article 9.

1.4 The A/E shall design the Project in accordance with the Owner's objectives of scope and cost. Only the Owner may approve adjustments to the scope or quality deemed necessary to stay within the Construction Cost Limitation.

1.5 The Programming Services will develop the Owner's description of the scope for each Project, preliminary project cost, schedule, criteria for design objectives, characteristics and constraints, space requirements and relationships, site requirements, existing facilities, and desired special components, systems and equipment. Programming Services shall be billed to Owner on an hourly basis, in accordance with the A/E's hourly rates set forth in Article 9. In performing the Programming Services, the A/E shall:

1.5.1 Visit project site or sites; review space program and review the Owner's Design Standards.

1.5.2 Consult with Owner's Chief Administration Officer and Facilities and Construction Management Department and/or designees regarding scope of services expected and Program and Project requirements.

1.5.3 Provide and develop, in coordination with Owner's Representative, all information required to develop the Project Addendum, as described in Section 1.1.

1.5.4 Provide a written evaluation of the Project scope of work to Owner's Chief Administration Officer and Facilities and Construction Management Department.

## ARTICLE 2

### A/E'S SERVICES AND RESPONSIBILITIES

#### 2.1 BASIC SERVICES

2.1.1 The A/E's Basic Services consist of the five phases described in Paragraphs 2.2 through 2.6, as listed below for the complete design services as contemplated herein, if applicable to the Project. The Basic Services are as follows:

- a. Architectural Services
- b. Landscape Architectural Services
- c. Civil Engineering Services
- d. Structural Engineering Services
- e. Mechanical Engineering Services
- f. Electrical Engineering Services
- g. Plumbing Engineering Services
- h. Construction Administration Services

2.1.2 The A/E shall identify a representative authorized to act on behalf of the A/E with respect to the Project. The A/E shall submit for prior approval by the Owner the names of all consultants, persons, or firms, which the A/E proposes to use in the execution of the services herein, described, and shall provide the Owner with a fully executed copy of each contract or agreement which the A/E enters into with any consultant. The Owner reserves the right, in its sole discretion, to reject the employment by A/E of any consultant for the Project to which Owner has an objection. A/E, however, shall not be required to contract with any consultant to which it has a reasonable objection. Reasonableness shall be agreed upon by both parties.

2.1.3 The A/E shall timely pay for such consultant services out of fees provided for in this Agreement. The Owner accepts no responsibility of any kind for such consultant fees and costs unless noted otherwise specifically herein.

2.1.4 The A/E agrees, to the extent not satisfied under the prime agreement, to allocate work to consultants in accordance with the Small Business Program attached hereto as **Exhibit C**. No changes to the Plan may be made unless approved in writing by the Owner. While this Agreement is in effect and until the expiration of one year after final completion, the Owner may require information from the A/E, and may conduct audits, to assure that the Plan is being, and was, followed.

2.1.5 The A/E shall carry such professional liability and errors and omissions insurance, covering the services provided under this Agreement, as is acceptable to and approved by the Owner.

The issuer of any insurance policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide.

The fees for such insurance policy will be at the expense of the A/E. A Certificate of Insurance indicating the expiration date, and existence, of the A/E's professional liability insurance is required prior to commencement or continuation of performance of the services under this Agreement. Each request for payment by the A/E shall include the expiration date of the insurance. A/E shall deliver to Owner replacement certificates not less than thirty (30) days prior to the expiration of any such insurance. If, however, A/E fails to pay any of the renewal premiums for the expiring policies, Owner shall have the right (but not the obligation) to make such payments and set off the amount thereof against the next payment coming due to A/E under this Agreement. If feasible, A/E shall provide evidence of Director and Officers liability insurance to the extent required by law. A/E shall name HCCS as additional insured on General Liability Insurance.

A Certificate of Insurance is required with a minimum limit based on the following:

a. General Liability

**\$1,000,000.00**  
**\$2,000,000.00 Aggregate**

b. Automobile Liability

**\$1,000,000.00**

c. Workers' Compensation

**Statutory amount required by law**  
**Employer's Liability each accident \$1,000,000.00**

d. Professional Liability

**\$ 1,000,000.00 (per claim)**  
**\$ 2,000,000.00 Aggregate**

The Certificates for insurance coverage shall indicate the expiration date of the A/E's professional liability and errors and omissions insurance. The A/E must carry professional liability and errors and omissions insurance for at least three (3) years following the term of this Agreement. The Certificate is to identify the specific name of the project according to the terms of this Agreement and identify the Houston Community College as the Project's Owner. Throughout all phases of professional services work covered by this Agreement, each request for fee payment (Article 6) by

the A/E is to be submitted in a format acceptable to the Owner and include the expiration date of the Certificate of Insurance.

2.1.6 The scope of all professional services applied to the design of this Project shall be such as to incorporate the latest technology appropriate to the stated mission of the institution and the programmed functional activities, yet compatible with any existing facility and acceptable to the Owner.

2.1.7 The A/E shall conduct its activities related to design, document production and review, and construction administration services in accordance with the Owner furnished **“Owner's Design Guidelines”** which have been provided to A/E by Owner and form a part of this Agreement. The Parties agree that the Owner's Design Guidelines may be modified by Owner from time to time.

2.1.8 The A/E shall cause to be prepared a detailed statement of probable cost (“Construction Cost Estimates”) of the Construction Project in a form acceptable to the Owner following the Construction Specifications Institute (CSI) 2011 format. Said estimates shall be submitted with plans and specifications when submitted for review at the completion of each design phase and at the completion of 95% Construction Documents as described in this Agreement, in such a manner that the construction cost of the Project is affirmed to the Owner by the A/E in writing.

2.1.8.1 The Construction Cost Estimate shall be the total cost of all elements of the project, including all alternate bids or proposals, designed and specified by the A/E. The Construction Cost Estimate shall include at current market rates, including a reasonable allowance for general conditions, overhead, profit (profit not to exceed five (5%) percent), the cost of labor and materials furnished by the Owner, and any equipment which has been shown in the plans specified, and specially provided for by the A/E. The Construction Cost Estimate should not include compensation to the A/E and the A/E's consultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the Owner as provided in Article 3.

2.1.8.2 Should any Construction Cost Estimate indicate a cost which exceeds the Construction Cost Limitation, the Owner will determine whether to increase the Construction Cost Limitation, or require the A/E to revise the Project scope or quality to bring the estimated cost within the Construction Cost Limitation at no additional cost to Owner. Reductions in Project scope or quality shall be subject to Owner's review and approval. Should any Construction Cost Estimate indicate a cost which is below the Construction Cost Limitation, the Owner and A/E shall mutually agree on changes to the project scope or the Construction Cost Limitation.

2.1.9 The A/E shall submit documents to the Owner for review at completion of the Schematic Design and Design Development phases and at the stages of completion of the Construction Documents. The A/E shall incorporate into the documents such corrections and amendments as the Owner requests, unless the A/E has objected in writing and has received the Owner's consent not to make the incorporation to which

the A/E objects. If any added costs are incurred at a later date due to a failure to incorporate requested corrections and amendments, the added design costs shall be at the A/E's sole expense. A/E shall list and indicate on a revised drawing all changes from the preceding issue of that drawing as required by Owner's Design Guidelines. Owner's approval of the revised drawing shall not be deemed to be an approval of any unlisted changes, and any costs or expense for any A/E's additional services subsequently incurred for such unlisted changes shall be borne or reimbursed by A/E.

2.1.10 The A/E, as part of Basic Services, shall attend Project meetings, communicate with members of the Project team and report progress to the Owner. The A/E shall become sufficiently familiar with facilities, systems and conditions existing at the Project location so that the proposed Project which is the subject of this Agreement will completely and properly interface functionally with the Owner's existing systems.

2.1.11 Notwithstanding anything to the contrary contained in this Agreement, Owner and A/E agree and acknowledge that Owner is entering into this Agreement in reliance on A/E's special and unique abilities with respect to performing A/E's services, duties, and obligations under this Agreement ("A/E's Services"). A/E accepts the relationship of trust and confidence established between A/E and Owner by this Agreement. A/E covenants with Owner to use A/E's the level of efforts, skill, judgment, and abilities as is consistent with the A/E's usual and customary standard of care in performing A/E's Services. A/E covenants to perform A/E's Services diligently and to further the interests of Owner in accordance with Owner's requirements and procedures. A/E covenants to perform A/E's Services (i) in accordance with the usual and customary professional standards of the A/E's profession for those A/E firms in the United States of a similar size and character which provide design services for projects which are similar in size, scope, and budget to the Project, and (ii) in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. There are no obligations, commitments, or impediments of any kind that will limit or prevent performance of A/E's Services. Except with the Owner's knowledge and consent, the A/E shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the A/E's professional judgment with respect to this Project.

Should A/E fail to comply with the standard of care required herein, the A/E's responsibilities under this Agreement, or the applicable laws, regulations, codes, ordinances, and orders, A/E hereby agrees indemnify Owner and to bear the full cost of correcting A/E's Services and the services of its consultants, and others who have acted in reliance thereupon.

2.1.12 A/E shall call to Owner's attention anything of any nature in A/E's drawings and specifications and any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to A/E (by Owner or any other party) which A/E regards in A/E's professional opinion as

unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished.

Nothing shall excuse or detract from A/E's responsibilities or obligations hereunder in a case where such documents or data are furnished unless A/E advises Owner in prompt written notice that in A/E's professional opinion such documents or data are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes A/E to proceed in accordance with the documents or data as originally given.

2.1.13 A/E shall exercise usual and customary professional care when performing its services so that A/E's Services shall be accurate and free from any material errors or omissions. A/E's duties as set forth herein shall at no time be in any way diminished by reason of any approval or acceptance by Owner, nor shall A/E be released from any liability by reason of such approval by Owner, it being understood that Owner at all times is ultimately relying upon A/E's skill and knowledge in performing A/E's services. Owner shall have the right to reject any portion of A/E's Services on the Project because of any fault or defect in the Project due to the plans, drawings and specifications, and other materials prepared by A/E, and prompt notice of any such rejection shall be given by Owner to A/E. A/E shall forthwith perform, without any additional cost or expense to Owner, any and all such services as are required to correct or remedy any act, error, or omission directly attributable to the plans, drawings, and specifications and other materials of A/E, or in connection with the A/E's Services, or the services of A/E's consultants or other persons employed by A/E, in the performance of any of the provisions of this Agreement.

Should the A/E refuse or neglect to correct or remedy such defects within a reasonable time after receiving notice requesting such correction or remedy, then Owner shall be entitled to effect such correction or remedy itself at the expense of A/E, and A/E shall reimburse Owner upon demand for all expenses incurred by Owner to effect such correction or remedy. This commitment by A/E is in addition to, and not in substitution for, any other remedy for defective services which Owner may have at law or in equity, or both.

2.1.14 The A/E shall not proceed beyond the phase of design authorized by the Owner, except at the A/E's own financial risk.

2.1.15 In the performance of A/E's obligations hereunder, A/E agrees to furnish efficient business administration and supervision and to use A/E's efforts to design the Project in accordance with the customary standard of care. The A/E will design the Project in an expeditious way in the best interest of the Owner.

2.1.16 In view of the services to be performed by A/E, A/E shall devote such time and in-house personnel as may be required to perform A/E's Services hereunder. Unless and until Owner grants its prior written approval to any substitution, or requests any substitution, A/E's Senior Principal responsible for completing the A/E's services shall be as listed in the Project Addenda. The day-to-day Project team will be led by the

person or persons as listed in the Project Addenda, unless otherwise directed by Owner or prevented by factors beyond the control of A/E. The Senior Principal shall act on behalf of A/E with respect to all phases of A/E's Services and shall be available as required for the benefit of the Project and Owner.

2.1.17 If any of the work materials produced or used by A/E pursuant to this Agreement are damaged or destroyed by fire or other casualty, A/E shall prepare or provide new copies of any such work materials that are so damaged or destroyed, unless A/E or Owner has a complete and undamaged set thereof.

2.1.18 A/E shall investigate any documents provided by the Owner and the visible existing conditions at the Project site to identify existing systems and construction which must be modified to accommodate the A/E's design for the Project and the construction of the Project. The A/E shall identify to Owner any incongruities between the documents and visible conditions, and shall consult with the Owner on any special measures required of the Owner or additional services required to accommodate the investigation, including, without limitation, any further investigation which is necessary for A/E to perform its services free from material errors and omissions, and so that A/E's design will be properly coordinated with existing systems and construction. This investigation shall be supervised by registered, professional architects and engineers, as appropriate.

2.1.19 Basic services shall include design awareness of the provisions of the Energy Conservation Design Standard for New State Buildings administered by the Energy Management Center of the Office of The Governor of the State of Texas and include furnishing the Owner with a Statement of Compliance certifying that the project design complies with the provisions.

The A/E shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. The A/E shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.1.20 The A/E shall be responsible for including in the Construction Documents such designs, equipment and systems specifications which comply with the Owner's warranty specifications. These specifications will be a part of the Construction Documents and shall be included as a part of the project manual.

The A/E shall at the completion of each phase of work submit copies of reports, drawings and specifications in hard copy & electronic format (electronic format shall be in both source & PDF format)

## 2.2 SCHEMATIC DESIGN PHASE

2.2.1 The A/E will prepare Schematic Design documents to confirm the scope and budget of the Schematic Design Documents provided. The Schematic Design documents shall include narrative with preliminary drawings as required to confirm the Schematic Design Documents provided. At the completion of Schematic Design Phase, the A/E's team shall prepare a preliminary Construction Cost Estimate and Project schedule. At the completion of this phase, the A/E shall submit Schematic Design Documents in accordance with Owner's Design Guidelines and any additional requirements set in of this Agreement.

The A/E shall review all laws, codes, and regulations applicable to the A/E's services as it relates to this Project.

A/E shall provide all services necessary to perform the services of this Phase (preparation of Schematic Design Documents) including, without limitation, unless otherwise approved by Owner, the preparation and prompt delivery of all items specified in Owner's Design Guidelines.

A/E shall work closely with Owner in preparation of schematic Design documents and shall specifically conform to Owner's requirements regarding aesthetic design issues.

2.2.2 The A/E shall furnish and deliver to the Owner **two (2)** complete printed sets of Schematic Design documents.

The A/E will analyze the existing building assessment (to the extent necessary for the Project), program of spaces, and preliminary schematic design and verify alignment of the project scope and budget. Schematic Design will include the following steps:

- Kick-off meeting with Owner's Representative to confirm vision for the building
- Site evaluation to confirm the building assessment report provided by the Owner, to the extent necessary for the Project
- Determine if more detailed investigative testing to confirm the existing conditions is required
- Meeting with Owner's Representative to review initial findings
- Incorporate Owner's comments

2.2.3 The A/E shall direct the preparation of a detailed Construction Cost Estimate as described in Sub-paragraph 2.1.8.1 to confirm adherence to the Construction Cost Limitation and present the same with the completed Schematic Design Documents.

2.2.4 Before proceeding into the Design Development Phase, the A/E shall obtain Owner's written acceptance of the Schematic Design documents and approval of the A/E's preliminary Construction Cost Estimate.

2.2.5 The Schematic Design documents shall consist of a narrative, drawings and other documents including a site plan, if appropriate, and preliminary buildings plans, sections and elevations as required to confirm the Schematic Design Documents provided; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

2.2.6 The A/E shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's Program, schedule and budget for the Construction Cost Estimate.

2.2.7 The A/E shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

## 2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments to the Owner's Program or Construction Cost Limitation authorized by the Owner, the A/E shall prepare, for approval by the Owner, Design Development Documents in accordance with Owner's written requirements to further define and finalize the size and character of the Project in accordance with Owner's Design Guidelines and any additional requirements set forth in this Agreement.

2.3.2 The A/E shall furnish and deliver to the Owner **two (2)** printed sets of Design Development documents.

2.3.3 The A/E shall direct the preparation of an updated Construction Cost Estimate as described in Sub-paragraph 2.1.8.1 to confirm adherence to the Construction Cost Limitation and present the same with the completed Design Development Documents.

2.3.4 Before proceeding into the Construction Document Phase, the A/E shall obtain Owner's written acceptance of the Design Development documents and approval of the mutually established Construction Cost Limitation.

2.3.5 The A/E shall prepare presentation materials as defined in Owner's Design Guidelines at completion of Design Development and if so requested shall present the same to the HCC Board of Trustees at a regular meeting.

2.3.6 If applicable to the Project, the A/E shall coordinate with the Owner's FFE Consultant to determine furniture layouts for all spaces where it is deemed important to substantiate the fulfillment of program space requirements, or to coordinate with specific architectural, mechanical and electrical elements.

2.3.7 If applicable to the Project, the A/E shall coordinate with the Owner's IT Consultant to determine data and equipment layouts for all spaces where it is deemed important to substantiate the fulfillment of program space requirements, or to coordinate with specific architectural, mechanical and electrical elements.

2.3.8 If applicable to the Project, the A/E shall coordinate with the Owner's Security Consultant to determine equipment layouts for all spaces where it is deemed important to substantiate the fulfillment of program space requirements, or to coordinate with specific architectural, mechanical and electrical elements.

## 2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Construction Cost Limitation, the A/E shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications in accordance with Owner's written requirements setting forth in detail the requirements for construction of the Project, including, without limitation, Owner's Design Guidelines and any additional requirements contained in this Agreement.

The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work.

2.4.2 The A/E shall assist the Owner in the determination of construction phasing and scheduling, bid or proposal alternates, special cash allowances, liquidated damages, the construction contract time period, and such other construction conditions considered appropriate for the Project.

The A/E will provide the Owner's Representative additional information, including Shop Drawings, Product Data, Samples and other similar submittals, in order to construct the Work.

2.4.3 The A/E, at 50%, 75% & 95% completion, shall furnish and deliver to the Owner's Representative complete sets of all plans, drawings and specifications in connection with the Work for review. The A/E shall incorporate into the plans, drawings and specifications such changes as are necessary to satisfy the Owner's review comments, any of which may be appealed in writing for good cause.

2.4.4 The A/E shall assist the Owner in connection with the Owner's responsibility and procedures for obtaining approval of all authorities having jurisdiction over the Project. The A/E shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

2.4.5 The reproduction of all plans, specifications and other documents for use by the A/E and its consultants and all documents reproduced for the various completion stage reviews by the Owner prior to the reproduction of bidding or proposal documents shall be paid for by A/E, without sales tax, out of the allowance for Reimbursable Expenses set forth in the Project Addendum. Addenda documents issued after the bid documents are reproduced shall be supplied as a reimbursable expense.

2.4.6 The A/E shall direct the preparation of an updated detailed Construction Cost Estimate as described in Sub-paragraph 2.1.8.1 to confirm adherence to the Construction Cost Limitation and present the same with the completed Construction Documents.

2.4.7 During the development of the Construction Documents, the A/E shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The A/E shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

2.4.8 Before proceeding into the Bidding and Proposal Phase, the A/E shall obtain Owner's written acceptance of the Construction Documents and approval of the mutually established Construction Cost Limitation.

## 2.5 BIDDING AND PROPOSAL PHASE

2.5.1 The A/E, following the approval by the Owner of the Construction Documents and acceptance of the final Construction Cost Estimate, or at other times as appropriate to the Project, shall assist the Owner in obtaining and evaluating bids or proposals, and assist in awarding contracts for construction, including preparation for and attendance at Pre-bid or Pre-proposal Conferences, or at the Owner's request. A/E shall answer inquiries from bidders and proposers at Owner's request, and shall prepare and issue any necessary addenda to the bidding or proposal documents. The A/E shall maintain a register of bid and proposal documents, distribute documents to bidders, proposers, and plan rooms, and obtain and administer deposits.

2.5.2 The A/E shall review the bid of the apparent low bidders or proposers and inform Owner's Representative in writing of its findings and recommendations. For proposers selected by qualifications and by competitive sealed proposals, the A/E shall investigate qualifications and other pertinent proposal information and inform the Owner's Representative in writing of its findings and recommendations.

2.5.3 In the event the lowest acceptable bid, proposal or guaranteed maximum price proposal received for the Project exceeds the Construction Cost Limitation agreed to by all parties at the completion of the Design Development Phase, the A/E, without

charge to the Owner, and if so directed by Owner, shall make such revisions to the drawings and specifications as may be necessary to bring the cost of the Project within the above stipulated cost limitation. The Owner reserves the right to accept a bid, proposal or guaranteed maximum price and award a construction contract that exceeds the stipulated Construction Cost Limitation, if such award is determined by Owner to be in the Owner's best interest, rather than requiring the A/E to revise the drawings and specifications. However, the method for computing the Basic Services Fee shall remain unchanged from that established in the Project Addendum.

## 2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Construction Phase shall commence with the award of the Contract for Construction and, together with the A/E's obligation to provide Basic Services under this Agreement, will terminate at the expiration of the Project's one-year warranty period. The A/E shall participate in the Project's one-year warranty review.

2.6.2 Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the A/E shall provide administration of the Contract for Construction as set forth below and in the edition of the Owner's Design Guidelines current as of the date of this Agreement.

2.6.3 A/E shall review and make recommendations to Owner's Representative as to the following:

- a) Contractor's list of proposed subcontractors for the work
- b) Contractor's Schedule of Values
- c) Contractor's Construction Schedule

2.6.4 The A/E and its consultants shall prepare appropriate materials for and conduct a Pre-Construction Conference prior to commencement of construction by the Contractor.

2.6.5 The A/E shall be a representative of the Owner during the Construction Phase, and shall advise and consult with the Owner. The A/E shall have authority to act on behalf of the Owner to the extent provided in the Contract Documents or in this Agreement unless otherwise modified by written instrument.

2.6.6 The A/E shall visit the site at least once each week, or more frequently as appropriate for the Project and requested by Owner, during the entire Construction Phase, and each consultant shall visit the site at appropriate times or as requested during construction activities related to each consultant's discipline, to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. The A/E and the structural engineer shall be on site for all structural concrete pours. The A/E and all applicable subconsultant(s) shall also be on site immediately prior to the cover up of major elements of the work. A/E and each sub-

consultant shall submit written reports of such visits and meetings. However, the A/E shall not be required to make exhaustive or continuous onsite visits to inspect the quality or quantity of the Work. On the basis of such onsite observations, the A/E shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. A/E shall notify Owner and the general contractor in writing of any portions of the work which A/E has observed as not being in conformity with the Construction Documents and make recommendations as to correction of such deficiencies or defects. As part of such on-site observation, A/E shall make its site representative available and shall consult with Owner and the general contractor on the occasion of all circumstances arising during the course of construction which would make such consultation in Owner's interests.

2.6.7 The A/E 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, for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

2.6.8 The A/E shall at all times have access to the Work wherever it is in preparation or progress.

2.6.9 The A/E shall determine the amounts owing to the Contractor based on observations at the site and on evaluations of the Contractor's Estimate for Partial Payment, and shall approve Contractor's Estimates for Partial Payment in such amounts.

2.6.10 The approval of a Contractor's Estimate for Partial Payment shall constitute a representation by the A/E to the Owner, based on the A/E's observations at the site as provided in Sub-paragraph 2.6.6 and on the data comprising the Contractor's Estimate for Partial Payment, that the Work has progressed to the point indicated; that, to the best of the A/E's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, 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 Contractor's Estimate for Partial Payment); and that the Contractor is entitled to payment in the amount certified. However, the approval of a Contractor's Estimate for Partial Payment shall not be a representation that the A/E has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum.

2.6.11 The A/E shall be the interpreter of the technical requirements of the Contract Documents and the judge of the performance thereunder by the Contractor. The A/E shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written recommendations within a reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor

relating to the execution or progress of the Work or the interpretation of the Contract Documents.

2.6.12 Interpretations and recommendations of the A/E shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form.

2.6.13 Subject to approval of the Owner, the A/E's decisions in matters relating to artistic effect shall be final, if consistent with the intent of the Contract Documents, and if agreed to by the Owner.

2.6.14 The A/E shall have the responsibility and the authority to reject Work which does not conform to the Contract Documents. Whenever, in the A/E's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the A/E will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed or completed.

2.6.15 The A/E and Consultants thereto shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work set forth in the Contract Documents, and shall respond to Contractor's inquiries and questions and provide such supplemental information as appropriate. Such action shall be taken with reasonable promptness so as to cause no delay to the Contractor's scheduled progress, but within fourteen (14) business days. The A/E's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.6.16 A/E shall provide consultation for the purpose of clarification and interpretation of the intent and scope of the Construction Documents and, if necessary or appropriate, issue supplemental documents to amplify or clarify portions of the Construction Documents. The A/E shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents. In conjunction with each Change, the A/E shall prepare an independent cost and time estimate for comparison with the Contractor's proposal and recommend to the Owner whether the proposal is acceptable. The A/E shall prepare revised Contract Drawings, where appropriate, to illustrate and document the work required by the Change. All proposed changes to drawings, plans and specifications, regardless of how initiated, shall be totally defined in the document depicting them as to scope of work added, removed, or changed. The original copies of the Construction Documents may be revised to show such changes, provided that all such revisions shall be separately recorded on media acceptable to Owner, including, without limitation, CADD. Such revisions shall be clearly indicated and a current revision date shall be included on the reproducible copy. Changes to the specifications shall be made by consecutively numbered and dated addenda. All changes to design documents or

specifications will be identified with date of change, revision number and other customary identification references. Areas changed on drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded. If the revised drawings are due to Changes ordered by the Owner and not due to errors and omissions on the part of the A/E, the extra expenses will be treated as Additional Services.

2.6.17 A/E shall provide assistance in the review of the general contractor's requests for change orders or claims for additional time or costs, and make recommendations to Owner as to such requests or claims.

2.6.18 A/E shall conduct Substantial Completion evaluations to determine the Dates of Substantial Completion, and at the time of Substantial Completion of construction, prepare a list of items which A/E has observed as requiring remedial work or replacement, and thereafter review the corrected and/or replaced work.

2.6.19 A/E shall review, for conformance with the Contract Documents, general contractor's submission of guarantees and warranties, and shall take any and all actions required of the A/E to ensure satisfaction of the Project closeout requirements as set forth in the Uniform General and Supplementary Conditions for HCC.

2.6.20 A/E shall review, for completion of submittal requirements, general contractor's submission of record drawings and operating and maintenance instructions, and all manuals, brochures, and drawings furnished by the general contractor relating to the operation and maintenance of the Project.

2.6.21 A/E shall review and approve, or take other appropriate action on, the general contractor's list of items to be completed or corrected, and shall certify final when all requirements of the Contract Documents are complete.

2.6.22 A/E shall provide assistance to Owner for the purpose of advising and counseling Owner's personnel in the usage, operation and maintenance of the building mechanical, electrical, and plumbing systems.

2.6.23 A/E shall prepare and submit formal, as in place drawings to Owner on media acceptable to Owner based off the Contractor's redline drawings.

2.6.24 The A/E shall be available after final payment to advise the Owner regarding Warranty items and to inspect Warranty work during the Warranty period to ensure proper correction.

2.6.25 When the Project is completed, the A/E shall furnish one **(1)** set of reproducible reproductions of record drawings, on medium acceptable to Owner, and one set of record drawings and Project technical specifications for computer access on CD-ROM or approved alternate for use with AutoCAD, with all construction changes duly

noted, to the Owner's Representative for the Owner's permanent files, together with a summary of all final program requirements and design criteria and data.

## 2.7 TIME

A/E shall perform all of A/E's services described herein as expeditiously as is consistent with (1) the degree of professional skill and care defined herein, (2) the orderly progress of such services, and (3) conformance with the Project schedule described in the Project Addendum. A/E shall at all times provide sufficient personnel to accomplish A/E's services within the time limits set forth in the schedules for each Project.

## 2.8 PROJECT MANAGEMENT SOFTWARE

The Owner has adopted e-Builder® ASP Project Management Communication Software, which A/E shall be required to utilize for all communications relating to the Project, as set forth in **Exhibit B**. A/E shall be responsible for purchasing the requisite licenses necessary for A/E's use on the Project, which shall be a Reimbursable Expense.

# **ARTICLE 3**

## THE OWNER'S RESPONSIBILITIES

3.1 Owner will review the A/E's Programming Services for the Project, and upon completion, will determine whether to proceed with the Project. Upon Owner's approval of the Project Addendum described in Section 1.2, Owner will authorize commencement of Basic Services. The Owner reserves the right to terminate the Agreement following completion of the Programming Services, and shall have no further obligation to A/E other than payment for Programming Services provided by A/E prior to such termination in accordance with the rates set forth in Article 9 and the terms and conditions of this Agreement.

3.2 The Owner's Representative will provide a preliminary project budget and timeline for the Project, and other all other information necessary for A/E to provide Programming Services.

3.3 The Owner will designate a representative authorized to act in the Owner's behalf with respect to the Project. The Owner's authorized representative shall examine the documents submitted by the A/E and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the A/E's Services. The representative is also designated as the Owner's representative for the purpose of administering this Agreement, including determination of fees earned by the A/E and equitable back charges against the A/E, it being understood that Owner shall have the right to withhold from payments due A/E such sums as necessary to protect Owner against any loss or

damage which may result from negligence by A/E or failure of A/E to perform A/E's obligations under this Agreement.

3.4 The Owner, at Owner's cost, will secure the services of surveyors, soils engineers or other special consultants to develop additional information to the extent necessary for the design of the Project. The A/E shall provide the Owner with parameters for inclusion in the Owner's instructions to such providers.

3.5 The Owner shall arrange and pay for structural, mechanical, chemical and other laboratory and construction materials tests as necessary during construction.

3.6 The services, information, surveys and reports required by Paragraphs 3.4 through 3.5 inclusive shall be furnished at the Owner's expense.

3.7 If the Owner observes or otherwise acquires actual knowledge of any design fault or defect in the Project or conflict in the Contract documents, written notice thereof will be given by such party to the A/E; however, Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

3.8 The Owner's Representative will review the A/E's design at the completion of Schematic Design and Design Development and at completion of the stages of Construction Documents. Comments concerning corrections or amendments to the plans and specifications will be furnished in writing to the A/E as promptly as possible after receipt of the documents for review. The Owner may require the A/E to halt production during design review.

3.9 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the A/E's services and of the Work.

3.10 The Owner shall furnish Construction Inspectors who shall be responsible for detailed inspection of the Work, consisting of close, on-site examination of the materials, structure and equipment; and surveillance of the workmanship and methods used to insure that the Project is reasonably accomplished in accordance with the Contract Documents and good construction practices. This does not relieve the A/E of the contractual obligations for verification of the Work and Contract Administration.

## **ARTICLE 4**

### **PAYMENTS TO THE A/E**

#### **4.1 PAYMENTS FOR BASIC SERVICES**

4.1.1 Payments for Basic Services shall be made at the end of each Phase of services, or with the Owner's approval monthly, and shall be in proportion to services

performed within each Phase of services, as demonstrated by work product, on the basis set forth in Article 9. A/E shall, prior to commencing Basic Services, submit a fee schedule for the Basic Services fee as set forth in the Project Addendum. Upon each request for payment, A/E shall submit an AIA Document G702, along with an AIA Document G703 showing an updated schedule of fees.

4.1.2 Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any payment (whether a progress payment or final payment) to A/E hereunder if any one or more of the following conditions precedent exist:

- a) A/E is in breach or default under this Agreement;
- b) Any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement;
- c) A/E has failed to make payments promptly to consultants or other third parties used in connection with the services for which Owner has made payment to A/E; or
- d) If Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement, no additional payments will be due A/E hereunder unless and until A/E, at A/E's sole cost, performs a sufficient portion of the remaining services so that such portion of the compensation then remaining unpaid is determined by Owner to be sufficient to complete the then remaining services.

4.1.3 No partial payment made hereunder shall be, or shall be construed to be, final acceptance or approval of that part of the services to which such partial payment relates, or a release of A/E of any of A/E's obligations hereunder or liabilities with respect to such services.

4.1.4 A/E shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services upon payment by Owner. The A/E shall, within ten (10) business days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the Work that are owned by the A/E under and in conformity with the A/E's contractual and/or legal obligations to such third parties, and shall, if requested, provide the Owner with evidence of such payments.

4.1.5 The acceptance by A/E or A/E's successors of final payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which A/E or A/E's successors have or may have against Owner under the provisions of this Agreement except those previously made in writing and identified by A/E as unsettled at the time of the final

request for payment. Nothing in this Section is intended to preclude A/E from asserting any necessary defenses in a subsequent legal proceeding initiated by Owner against A/E.

4.1.6 For purposes of Texas Government Code § 2251.021(a) (2), the date the performance of service is completed is the date when the Owner's representative approves the invoice. All invoices shall be submitted to the Owner's Representative for approval and processing.

#### 4.2 PAYMENTS FOR ADDITIONAL SERVICES

Payments on account of the A/E's Additional Services and for Reimbursable Expenses as defined in Article 5 shall be made monthly upon presentation of the A/E's valid statement of services rendered or expenses incurred approved by Owner.

#### 4.3 PAYMENTS WITHHELD

No deductions shall be made from the A/E's compensation on account of liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the A/E may be liable. Owner shall comply with procedural requirements required of Owner under the Government Prompt Pay Act, Texas Government Code Chapter 2251 with respect to any deductions or disputed invoices.

#### 4.4 PROJECT SUSPENSION OR TERMINATION

If the Project is suspended or abandoned in whole or in part for more than six (6) months, the A/E shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than six (6) months, the A/E's compensation shall be equitably adjusted if, in the Owner's opinion, such adjustment is warranted.

### **ARTICLE 5**

#### **ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES**

5.1 Additional Services are those services which shall be provided if authorized or confirmed in writing by the Owner and for which compensation will be provided as described in this Agreement in addition to Basic Compensation. Prior to commencing any Additional Service, A/E shall prepare for acceptance by the Owner an Additional Services proposal, in the form attached hereto as **Exhibit D**, which shall describe in detail the nature or scope of the Additional Services, the basis upon which A/E has determined that

such services are Additional Services, and which shall set forth the maximum amount of fees and reimbursable expenses for which A/E is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Service. Those services which the Owner contemplates to be provided as Additional Services or considered to be Additional Services may include but shall not limited to: Constructability Services; Commission Services; LEED Silver Certification Investigative Testing to Confirm Existing Conditions, or other services not included in the Basic Services. A/E shall proceed with Additional Services only after written acceptance by Owner of the Additional Services proposal.

5.2 Upon acceptance by Owner, each Additional Services proposal and the services performed by A/E pursuant to such Additional Services proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a Basic Service at the original execution of this Agreement.

5.3 Providing services to make detailed investigations of existing conditions or facilities or to make measured drawings thereof is an Additional Service except to verify the accuracy and completeness of drawings or other information furnished by the Owner to the extent necessary for the A/E to complete its responsibilities hereunder. A/E shall not be required to perform any destructive testing or to hire the services of a surveyor unless agreed to as an Additional Service.

5.4 Reimbursable Expenses are in addition to the Compensation for Basic and Additional Services and include actual out-of-pocket reasonable expenditures made by the A/E and the A/E's employees and consultants incurred solely and directly in connection with A/E's performance of its services hereunder for the following expenses:

5.4.1 Professional models and renderings.

5.4.2 Reproductions, printing, binding, collating and handling of reports, and drawings and specifications or other project-related work product, other than that used solely in-house for A/E and its consultants, as required by Article 2.

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

5.4.4 Expense of any additional insurance coverage or limits, excluding professional liability and errors and omissions insurance required under Basic Services of this contract, requested by the Owner in excess of that normally carried by the A/E and the A/E's consultants.

5.5 For each Project, Owner shall designate and set forth in the Project Addendum an allowance for Reimbursable expenses, which shall be in addition to the A/E's fee for Basic Services. No Reimbursable expenses in excess of the allowance set forth in the

Project Addendum shall be incurred by A/E or payable by Owner without the Owner's prior written approval of such expenses. A/E shall submit receipts to the Owner for all reimbursable expenses, whether charged against the allowance or approved by Owner in excess of the allowance.

## **ARTICLE 6**

### **A/E'S ACCOUNTING RECORDS**

Records of Reimbursable Expenses and expenses pertaining to Additional Services shall be kept on the basis of Generally Accepted Accounting Principles and shall be available to the Owner, the Owner's Representative, the Owner's internal or external auditors and/or the Owner's authorized representative at mutually convenient times for a period of at least three (3) years after final completion of the Project. Owner shall have the right to verify the details set forth in A/E's billings, certificates, and statements, either before or after payment therefore, by (1) inspecting the books and records of A/E during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing A/E's business employees; (4) visiting the Project site; and (5) other reasonable action.

## **ARTICLE 7**

### **OWNERSHIP AND USE OF DOCUMENTS**

7.1 Drawings and Specifications as instruments of service are and shall remain property of the A/E whether the Project for which they are made is executed or not. The Owner shall be permitted to retain copies including source electronic and reproducible copies of Drawings and Specifications for information and reference in connection with the Owner's use and occupancy of the Project. Owner shall have an irrevocable paid-up perpetual license and right, which shall survive the termination of this agreement, to use the Drawings and Specifications, including the originals thereof, and the ideas and designs contained therein, for the completion of, and in connection with, the Project, regardless of whether A/E remains as the A/E, has resigned, this Agreement has been terminated, A/E's scope of services has been modified, or the services herein have been completed. If this Agreement is terminated, A/E hereby consents to the employment by Owner of a substitute A/E to complete the services under this Agreement, with the substitute A/E having all of the rights and privileges of the original A/E. The Drawings and Specifications shall not be used either by the Owner or the A/E on other projects, except by agreement in writing.

7.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the A/E's rights.

## **ARTICLE 8**

### **TERM AND TERMINATION OF AGREEMENT**

8.1 The term of this Agreement shall begin on the date duly executed by both Parties, and shall continue for three (3) years, with two (2) additional one (1) year renewals at the option of Owner. This Agreement may be terminated by either party upon ten (10) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination and such failure is not fully cured prior to the expiration of such ten day period.

8.2 This Agreement may be terminated by the Owner upon at least ten (10) days' written notice to the A/E in the event that the Project is to be temporarily or permanently abandoned.

8.3 In the event of termination not the fault of the A/E, the A/E shall be compensated for all services satisfactorily performed to the termination date, together with approved Reimbursable Expenses then due, provided A/E shall have delivered to Owner such statements, accounts, reports and other materials as required by Paragraph 9.5 below together with all reports, documents and other materials prepared by A/E prior to termination.

8.4 A termination under this Article 8 shall not relieve A/E or any of its employees of liability for violations of this Agreement, or any act or omission, or negligence, of A/E. The provisions of Article 7 hereof shall survive the termination of this Agreement. In the event of a termination under this Article 8, A/E hereby consents to employment by Owner of a substitute A/E to complete the services under this Agreement, with the substitute A/E having all rights and privileges of the original A/E of the Project.

8.5 As of the date of termination of this Agreement, A/E shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by A/E in connection with A/E's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise.

## **ARTICLE 9**

### **BASIS OF COMPENSATION**

The Owner shall compensate the A/E for the Scope of Services provided, in accordance with Article 4, Payments to the A/E, and the other Terms and Conditions of this Agreement, as follows:

## 9.1 BASIC COMPENSATION

9.1.1 FOR BASIC SERVICES, as described in Article 2, and any other services included as part of Basic Services, Basic Compensation shall be set forth in the Project Addendum described in Paragraph 1.1:

If the actual contract award for construction less special cash allowances and construction contingency exceeds the established Construction Cost Limitation, and Owner elects to award the construction contract based on such actual construction cost, then the percentages set forth above in this paragraph 9.1.1, or elsewhere herein, shall, nevertheless, be applied only to the established Construction Cost Limitation, and not to the actual construction cost. If the actual contract award for construction less special cash allowances and construction contingency does not exceed the Construction Cost Limitation, then the percentages set forth above in this Paragraph 9.1.1, or elsewhere herein, shall, nevertheless, be applied to the only to the established Construction Cost Limitation, and not to the actual Project construction cost, except that the resulting fees, when expressed as a percentage of the corresponding actual Project construction cost, shall not exceed the maximum percentage fees established by the HCCS Board of Trustees, or such other limitations imposed by law which may be in effect at the time.

9.1.2 Payments for Basic Services shall be made as provided in Article 4, so that Basic Compensation for each Phase shall equal the following percentages of the total Basic Compensation payable:

|                               |     |
|-------------------------------|-----|
| Schematic Design Phase:       | 15% |
| Design Development Phase:     | 20% |
| Construction Documents Phase: | 40% |
| Bidding or Negotiation Phase: | 5%  |
| Construction Phase:           | 18% |
| 1 Year Warranty Phase         | 2%  |

9.1.3 The Owner may require the A/E to provide Basic Services for separate parts of the Project, and Basic Services for separate parts may be required on different schedules. Each such occurrence is defined as a Construction Contract Stage (CCS), and each Construction Contract Stage shall have a Sub-Construction Cost Limitation (SCCL). The A/E's final Basic Services fee will be the sum of the Basic Services fees calculated under Article 9.1 for each Sub-Construction Cost Limitation (SCCL), if any. The sum of all Sub-Construction Cost Limitations shall not exceed the single Construction Cost Limitation for the Project.

9.1.4 The Owner and the A/E agree in accordance with the Terms and Conditions of this Agreement that if the scope of the Project or description of the A/E's Services is changed materially, the amounts of compensation shall be equitably adjusted.

## 9.2 COMPENSATION FOR ADDITIONAL SERVICES

9.2.1 FOR ADDITIONAL SERVICES OF THE A/E AND CONSULTANTS, as described in Article 5, and any other services, as part of Additional Services, Compensation shall be computed in one of the following ways, at the Owner's sole discretion:

- a. A pre-established lump sum amount.
- b. A pre-established percent of the cost of the item in question.
- c. Based on the hourly rate schedule listed below, which shall also be used for Programming Services provided in advance of the establishment of the Project Addendum defined in Paragraph 1.2. The rates below shall be fixed for the full Term of this Agreement, without annual escalation.

|                                  |             |
|----------------------------------|-------------|
| Principal                        | \$ _____/Hr |
| Project Director/Project Manager | \$ _____/Hr |
| Designer                         | \$ _____/Hr |
| Project Administrator            | \$ _____/Hr |
| Clerical/Administrative Staff    | \$ _____/Hr |

9.2.2 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical and electrical engineering services and those provided under Paragraph 2.1.1, compensation shall be computed as described in 9.2.1 above for the consultant plus a multiple not to exceed 1.10 times the amounts billed to the A/E for such services.

9.2.3 FOR REIMBURSABLE EXPENSES, as described in Article 5, and any other items included in this Agreement as Reimbursable Expenses, a multiple not to exceed 1.10 times the amounts expended by the A/E, the A/E's employees and consultants in the interest of the Project. Reimbursable Expenses the compensation shall be included in the lump sum contract amount.

## 9.3 PAYMENTS TO THE A/E

9.3.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the A/E's invoice. A/E must send an original invoice, with duplicate copy to Houston Community College, Attention: Accounts Payable Department, 3100 Main Street, Houston, Texas 77002 and HCC Project Manager.

9.3.2 Any amount unpaid Forty-five (45) days after the invoice shall bear interest at the rate authorized by Texas State law. A payment begins to accrue interest on the date

the payment becomes overdue. Interest on an overdue payment stops accruing on the date the Owner mails or electronically transmits the payment. The unpaid balance of a partial payment made within the prescribed period accrues interest, unless the balance is in dispute.

## **ARTICLE 10**

### **SUCCESSORS AND ASSIGNS**

The Owner and the A/E, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, permitted successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. This Agreement is a personal service contract for the services of A/E, and A/E's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. The benefits and burdens of this Agreement are, however, assignable by Owner.

## **ARTICLE 11**

### **EXTENT OF AGREEMENT**

This Agreement supersedes all prior agreements, written or oral, between A/E and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by both Owner and A/E.

## **ARTICLE 12**

### **MISCELLANEOUS PROVISIONS**

**12.1 Captions.** The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

**12.2 Governing Law.** This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

**12.3 Waivers.** No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of

the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

**12.4 Severability.** In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

**12.5 Independent Contractor.** A/E recognizes that A/E is engaged as an independent contractor and acknowledges that Owner shall have no responsibility to provide A/E or its employees with transportation, insurance or other fringe benefits normally associated with employee status. A/E, in accordance with A/E's status as an independent contractor, covenants and agrees that A/E shall conduct A/E's Services consistent with such status, that A/E will neither hold A/E out as nor claim to be an officer, partner, employee or agent of Owner by reason hereof, and that A/E shall not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner by reason hereof, and that A/E shall not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. A/E hereby agrees to make A/E's own arrangements for any of such benefits as A/E may desire and agrees that A/E is responsible for all income taxes required by applicable law.

**12.6 Family Code Child Support Certification.** By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

**12.7 Tax Certification.** By signing this Agreement, the undersigned certifies as follows: "Under Section 2155.004, *Texas Government Code*, the A/E certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

**12.8 Loss of Funding.** Performance by Owner under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Trustees of Houston Community College (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to A/E and Owner may terminate this Agreement without further duty or obligation hereunder. A/E acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.

**12.9 Proprietary Interests.** All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by A/E in the performance of services for Owner, which is not generally known to the public, shall be confidential and A/E shall not, beginning on the date of first association or communication between Owner and A/E and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for A/E's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, A/E shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of A/E as an independent contractor of Owner in connection with the Project, or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of Owner. A/E shall obtain assurances similar to those contained in this Subparagraph from persons, contractors, and subcontractors retained by A/E. A/E acknowledges and agrees that a breach by A/E of the provisions hereof will cause Owner irreparable injury and damage. A/E, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

**12.10 Appointment.** Owner hereby expressly reserves the right from time to time to designate by notice to A/E a representative to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. A/E shall act only upon instructions from such representative unless otherwise specifically notified to the contrary.

**12.11 Records.** Records of A/E costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for three (3) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Consultant in writing.

**12.12 Certification Regarding Terrorist Organizations and Boycott of Israel.** A/E hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. (A/E further certifies and verifies that neither A/E, nor any affiliate, subsidiary, or parent company of A/E, if any (the "A/E Companies"), boycotts Israel, and contractor agrees that A/E and A/E Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

**12.13 Notices.** All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this

Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner: **HCC**

- Houston Community College  
(1) E. Ashley Smith, General Counsel  
Office of the General Counsel  
3100 Main St, (MC 1144)  
Houston, TX 77002

With Copies to:

Houston Community College  
Rogelio Anasagasti, Executive Director, Procurement Operations  
3100 Main Street  
Houston, Texas 77002

- (2) If to A/E: \_\_\_\_\_
- (3) or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

**12.14 Enforcement.** It is acknowledged and agreed that A/E's services to Owner are unique, which gives A/E a peculiar value to Owner and for the loss of which Owner cannot be reasonably or adequately compensated in damages; accordingly, A/E acknowledges and agrees that a breach by A/E of the provisions hereof may cause Owner irreparable injury and damage. A/E, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, but only if Owner is not in breach of this Agreement.

**12.15 Dispute Resolution.** Any dispute under this agreement may, upon mutual agreement of the parties, be submitted to mediation. The mediator shall be selected by agreement of the parties, and the costs of mediation shall be shared equally between the parties. If mediation is not successful, a party may initiate litigation in a court of competent jurisdiction, with venue in Harris County, Texas. This Agreement shall be construed under the laws of the state of Texas. The prevailing party to any dispute shall be entitled to recover its reasonable attorneys' fees.

**12.15 Indemnification.** A/E AGREES TO INDEMNIFY, RELEASE, AND HOLD THE OWNER AND THE OWNER'S TRUSTEES, OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, AND STUDENTS HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, AND LIABILITIES (each as used herein shall be referred to as "Claim") OF ANY TYPE OR ANY NATURE WHATSOEVER (INCLUDING COSTS AND REASONABLE LEGAL AND EXPERT FEES), INCLUDING DAMAGE TO, LOSS OF, OR DESTRUCTION OF ANY PROPERTY OR HARM TO ANY PERSON, BUT

ONLY TO THE EXTENT ARISING FROM, IN CONNECTION WITH, OR ANY WAY INCIDENT TO THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF A/E. IN ADDITION THE OWNER AGREES, TO THE EXTENT PERMITTED BY TEXAS STATE LAW, TO INDEMNIFY AND HOLD HARMLESS THE A/E, ITS OFFICERS, DIRECTORS, EMPLOYEES AND SUBCONSULTANTS AGAINST ANY DAMAGES, LIABILITIES, OR COSTS AS A RESULT OF THE ACTS OF OWNER. NOTHING HEREIN SHALL BE CONSTRUED OR INTERPRETED AS LIMITING OR WAIVING OWNER'S IMMUNITY FROM SUIT OR LIABILITY.

**12.16 Intellectual Property Indemnification.** A/E warrants, represents, and covenants that the Owner shall have all rights to the Work Product delivered to the Owner and that the Work Product will not infringe upon and is not a misappropriation of the rights of any third party. IN THE EVENT A CLAIM IS MADE AGAINST THE OWNER FOR INFRINGEMENT OR MISAPPROPRIATION, A/E WILL INDEMNIFY, DEFEND AND HOLD THE OWNER HARMLESS FROM SUCH CLAIM. Additionally, if the Owner cannot use the Work Product as a result of infringement or misappropriation, A/E, at its sole expense will either:

- a) Obtain a license for HCC to use the infringing item;
- b) Provide a non-infringing work-around or an original replacement of Work Product, free of any alleged misappropriation; or
- c) Refund to the Owner all fees paid.

(THIS SECTION IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, Owner and A/E have executed and delivered this Agreement as a sealed instrument as of the date first above written.

OWNER:  
HOUSTON COMMUNITY COLLEGE SYSTEM

By: \_\_\_\_\_

Name:

Title: Chancellor

Date: \_\_\_\_\_

A/E: [Insert]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Principal

Date: \_\_\_\_\_

CONTENT APPROVED:

\_\_\_\_\_

Printed Name: \_\_\_\_\_

General Counsel, HCCS

## **EXHIBITS**

**Exhibit A**    Form of Project Addendum

**Exhibit B**    Project Management Software

**Exhibit C**    Small Business Development Program

Appendix 1    Consultant and Sub-Consultant/Supplier Participation Form

Appendix 2    Progress Assessment Report Form for Sub-Consultants

Appendix 3    Subconsultant Payment Certification Form

**Exhibit D**    Additional Services Proposal Form

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## Exhibit A

**PROJECT ADDENDUM No. \_\_\_\_\_ for \_\_\_\_\_ College**

**Between HCC (“Owner”) and \_\_\_\_\_ (“A/E”)**

### **I. INITIAL INFORMATION**

Project Name/Description: \_\_\_\_\_  
\_\_\_\_\_

Project Address: \_\_\_\_\_

HCC Facilities Staff Project Manager: \_\_\_\_\_

A/E’s Representative for Project: \_\_\_\_\_

#### **The A/E’s Consultants for the Project are:**

Civil:

Structural:

MEP:

Landscape:

Other:

### **II. PROJECT SCHEDULE**

Anticipated Notice to Proceed (NTP) \_\_\_\_\_

Schematic Design Verification \_\_\_\_\_

Design Development \_\_\_\_\_

Construction Documents \_\_\_\_\_

Bidding and Contract Award \_\_\_\_\_

Construction to Substantial Completion \_\_\_\_\_

Date of Substantial Completion \_\_\_\_\_

**III. CONSTRUCTION COST LIMITATION**

\$ \_\_\_\_\_

( \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents)

**IV. BASIC SERVICES FEE**

Construction Cost Limitation (Renovations)      \$ \_\_\_\_\_ x \_\_\_\_\_ % = \$ \_\_\_\_\_  
Basic Services Fee

Reimbursable Expenses Allowance      =      \$ \_\_\_\_\_

Therefore, Total Lump Sum (Not to Exceed)      \$ \_\_\_\_\_

**This Project Addendum shall form a part of the A/E Agreement between Owner and A/E as is fully set forth in said Agreement.**

OWNER:  
HOUSTON COMMUNITY COLLEGE SYSTEM

By: \_\_\_\_\_  
Name: James Walker  
Title: Chief Facilities Officer

Date: \_\_\_\_\_

A/E: [INSERT]

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

Date: \_\_\_\_\_

## **EXHIBIT B**

### **PROJECT MANAGEMENT SOFTWARE**

#### **1.1 SUMMARY**

- A. Project Management Communications: The A/E shall use the Internet web based project management communications tool, e-Builder® ASP software and protocols included in that software during this project. The use of project management communications as herein described does not replace or change any contractual responsibilities of the participants.
  - 1. Project management communications is available through e-Builder® as provided by "e-Builder" in the form and manner required by HCC.
  - 2. The project communications database is on-line and fully functional. User registration, electronic and computer equipment, and Internet connections are the responsibility of each project participant. The sharing of user accounts is prohibited
- B. Training: e-Builder® will provide a group training sessions scheduled by HCC, the cost of which is included in the initial users' fee. Users are required to attend the scheduled training sessions they are assigned to. Requests for specific scheduled classes will be on a first come first served basis for available spaces. Companies may also obtain group training from E-Builder at their own expense, please contact e-Builder® for availability and cost.
- C. Support: e-Builder® will provide on-going support through on-line help files.
- D. Project Archive: The archive shall be available to each team member at a nominal cost. The archive set will contain only documents that the firm has security access to during construction. All legal rights in any discovery process are retained. Archive material shall be ordered from e-Builder®.
- E. Copyrights and Ownership: Nothing in this specification or the subsequent communications supersedes the parties' obligations and rights for copyright or document ownership as established by the Contract Documents. The use of CAD files, processes or design information distributed in this system is intended only for the project specified herein.
- F. Purpose: The intent of using e-Builder® is to improve project work efforts by promoting timely initial communications and responses. Secondly, to reduce the number of paper documents while providing improved record keeping by creation of electronic document files.
- G. Authorized Users: Access to the web site will be by individuals who are licensed users.

1. Individuals may use the User Application included in these specifications or may request the User Application.
  2. Submit completed user application forms with check made payable to "e-Builder, Inc.".
  3. Authorized users will be contacted directly by the web site provider, e-Builder®, who will assign the temporary user password.
  4. Individuals shall be responsible for the proper use of their passwords and access to data as agents of the company in which they are employed.
- H. Administrative Users: Administrative users have access and control of user licenses and all posted items. **DO NOT POST PRIVATE OR YOUR COMPANY CONFIDENTIAL ITEMS IN THE DATABASE!** Improper or abusive language toward any party or repeated posting of items intended to deceive or disrupt the work of the project will not be tolerated and will result in deletion of the offensive items and revocation of user license at the sole discretion of the Administrative User(s).
- I. Communications: The use of fax, email and courier communication for this project is discouraged in favor of using e-Builder® to send messages. Communication functions are as follows:
1. Document Integrity and Revisions:
    - a. Documents, comments, drawings and other records posted to the system shall remain for the project record. The authorship time and date shall be recorded for each document submitted to the system. Submitting a new document or record with a unique ID, authorship, and time stamp shall be the method used to make modifications or corrections.
    - b. The system shall make it easy to identify revised or superseded documents and their predecessors.
    - c. Server or Client side software enhancements during the life of the project shall not alter or restrict the content of data published by the system. System upgrades shall not affect access to older documents or software.
  2. Document Security:
    - a. The system shall provide a method for communication of documents. Documents shall allow security group assignment to respect the contractual parties' communication except for Administrative Users. **DO NOT POST PRIVATE OR YOUR COMPANY CONFIDENTIAL ITEMS IN THE DATABASE!**
  3. Document Integration:
    - a. Documents of various types shall be logically related to one another and discoverable. For example, requests for information, daily field

reports, supplemental sketches and photographs shall be capable of reference as related records.

4. Reporting:
  - a. The system shall be capable of generating reports for work in progress, and logs for each document type. Summary reports generated by the system shall be available for team members.
5. Notifications and Distribution:
  - a. Document distribution to project members shall be accomplished both within the extranet system and via email as appropriate. Project document distribution to parties outside of the project communication system shall be accomplished by secure email of outgoing documents and attachments, readable by a standard email client.
6. Required Document Types:
  - a. RFI, Request for Information.
  - b. Submittals, including record numbering by drawing and specification section.
  - c. Transmittals, including record of documents and materials delivered in hard copy.
  - d. Meeting Minutes.
  - e. Application for Payments (Draft or Pencil).
  - f. Review Comments.
  - g. Daily Field Reports.
  - h. Construction Photographs.
  - i. Drawings.
  - j. Supplemental Sketches.
  - k. Schedules.
  - l. Specifications.
- J. Record Keeping: Except for paper documents, which require original signatures and large format documents (greater than 8½ x 11 inches), all other 8½ x 11 inches documents shall be submitted by transmission in electronic form to the e-Builder® web site by licensed users.
  - a. The Owner and its representatives, Design Consultants, and the Contractors, sub-contractors and suppliers at every tier shall respond to documents received in electronic form on the web site, and consider them as if received in paper document form.
  - b. The Owner and its representatives, Design Consultants, and the Contractors, sub-contractors and suppliers at every tier reserves the right to and shall reply or respond by transmissions in electronic form on the web site to documents actually received in paper document form.

- c. The Owner and its representatives, Design Consultants, and the Contractors, sub-contractors and suppliers at every tier reserves the right to and shall copy any paper document into electronic form and make same available on the web site.
  - d. The following are some but not all of the paper documents which require original signature:
    - 1) Contract
    - 2) Change Orders
    - 3) Application & Certificates for Payment
    - 4) Construction Change Directives (CCD)
    - 5) Forms and reports in Division 0
- K. Minimum Equipment and Internet Connection: In addition to other requirements specified in this Section, The Owner and its representatives, Design Consultants, and the Contractors, sub-contractors and suppliers at every tier required to have a user license(s) shall be responsible for the following:
- 1. Providing suitable computer systems for each licensed user at the users normal work location<sup>1</sup> with high-speed Internet access, i.e. DSL, local cable company's Internet connection, or T1 connection.
  - 2. Each of the above referenced computer systems shall have the following minimum system<sup>2</sup> and software requirements:
    - a. Desktop configuration (Laptop configurations are similar and should be equal to or exceed desktop system.)
      - 1) PC system 500 MHz Intel Pentium III or equivalent AMD processor
      - 2) 128 MB Ram
      - 3) Display capable of SVGA (1024 x 768 pixels) 256 colors display
      - 4) 101 key Keyboard
      - 5) Mouse or other pointing device
    - b. Operating system and software shall be properly licensed.
      - 1) Internet Explorer or other browser (current version is a free distribution for download). This specification is not intended to restrict the host server or client computers provided that industry standard HTTP clients may access the published content.
      - 2) Adobe Acrobat Reader (current version is a free distribution for download).

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<sup>1</sup> The normal work location is the place where the user is assigned for more than one-half of his time working on this project.

<sup>2</sup> The minimum system herein will not be sufficient for many tasks and may not be able to process all documents and files stored in the E-Builder® Documents area.

- 3) Or, users intending to scan and upload to the documents area of e-Builder® should have Adobe Acrobat (current version must be purchased).
- 4) Users should have the standard Microsoft Office Suite (current version must be purchased) or the equivalent.

## **PART 2 - PRODUCTS**

### **2.1 LICENSE**

- A. Contact e-Builder® at (800) 580-9322 to purchase licenses.

## **EXHIBIT C**

### **SMALL BUSINESS DEVELOPMENT PROGRAM**

#### **Overview**

HCC has adopted a Small Business Development Program for small businesses attempting to provide goods and/or services as prime consultants or as sub-consultants to other prime consultants of HCC. The program is designed to prevent discrimination in contracting and to ensure that small, underutilized, and disadvantaged businesses are informed and prepared to compete for HCC procurements. HCC will neither discriminate nor select vendors on the basis of race, color, national origin, religion, gender, age, or disability in its procurement selection process. The subcontracting goal applies to all vendors regardless of their status.

#### **Small Business Compliance**

The Consultant hereby agrees to put forth its best effort to attain small business participation in under this Contract. To ensure compliance with any stated small business participation goal, the Consultant shall be required to provide reports as may be required by the Contract and meet with the HCC Representative at the 50% and 75% completion phases/dates of the Project, to verify small business participation activity and to ensure compliance with the stated small business goal, if any. Additionally, the Consultant agrees to enter into sub-consultant agreements for the Services that are identified on the form entitled Consultant and Subconsultant/Supplier Participation. The Consultant's failure to comply with the aforementioned small business participation requirements may result in:

- Withholding of payment until such compliance is achieved or a waiver of the provisions is provided by HCC; and/or.
- Revocation of any benefits and incentives under the program or suspension or termination of the Contract in whole or in part.

#### **Prime Consultant /Contracts for Services**

The Consultant must perform a minimum of 35% of any contract for services with its labor force and or demonstrate management of the Contract for services to the satisfaction of HCC.

#### **Internship Program**

The Consultant is encouraged to make a commitment to utilize certain HCC student(s) in an internship capacity for the provision of Services under the Contract. The Consultant shall be expected to pay the student(s) at least the minimum wage required by law. HCC shall provide the Consultant with the name(s) of student(s) eligible to participate in the internship program.

Attached to this Exhibit C are the following forms, which shall be used for reporting purposes:

- Appendix 1 Consultant and Sub-Consultant/Supplier Participation Form
- Appendix 2 Progress Assessment Report Form for Sub-Consultants
- Appendix 3 Sub-Consultant Payment Certification Form

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**APPENDIX #1**  
**HOUSTON COMMUNITY COLLEGE**  
**CONSULTANT AND SUBCONSULTANT PARTICIPATION FORM**

Bidder/offeror presents the following participants in this solicitation and any resulting Contract. All bidders / offerors, including small businesses bidding as prime Consultants are required to demonstrate good faith efforts to include eligible small businesses in their bid/proposal submissions.

| Consultant                                                                                     | Specify in Detail Type of Work to be Performed | Indicate below, the following:<br>Small Business (SB) and<br>Certification Status, if any<br>(i.e. SB – COH, METRO, etc.) | Percentage of<br>Contract Effort | Price |
|------------------------------------------------------------------------------------------------|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|----------------------------------|-------|
| Business Name:                                                                                 |                                                |                                                                                                                           |                                  |       |
| Business Address:                                                                              |                                                |                                                                                                                           |                                  |       |
| Telephone No.                                                                                  |                                                |                                                                                                                           |                                  |       |
| Contact Person Name/E-mail:                                                                    |                                                |                                                                                                                           |                                  |       |
| <b>SMALL BUSINESS SUBCONSULTANT(S)</b><br>(Attach separate sheet if more space is needed.)     |                                                |                                                                                                                           |                                  |       |
| Business Name:                                                                                 |                                                |                                                                                                                           |                                  |       |
| Business Address:                                                                              |                                                |                                                                                                                           |                                  |       |
| Telephone No. :                                                                                |                                                |                                                                                                                           |                                  |       |
| Contact Person:                                                                                |                                                |                                                                                                                           |                                  |       |
| Business Name:                                                                                 |                                                |                                                                                                                           |                                  |       |
| Business Address:                                                                              |                                                |                                                                                                                           |                                  |       |
| Telephone No. :                                                                                |                                                |                                                                                                                           |                                  |       |
| Contact Person:                                                                                |                                                |                                                                                                                           |                                  |       |
| <b>NON-SMALL BUSINESS SUBCONSULTANT(S)</b><br>(Attach separate sheet if more space is needed.) |                                                |                                                                                                                           |                                  |       |
| Business Name:                                                                                 |                                                |                                                                                                                           |                                  |       |
| Business Address:                                                                              |                                                |                                                                                                                           |                                  |       |
| Telephone No.:                                                                                 |                                                |                                                                                                                           |                                  |       |
| Contact Person                                                                                 |                                                |                                                                                                                           |                                  |       |
| Business Name:                                                                                 |                                                |                                                                                                                           |                                  |       |
| Business Address:                                                                              |                                                |                                                                                                                           |                                  |       |
| Telephone No. :                                                                                |                                                |                                                                                                                           |                                  |       |
| Contact Person:                                                                                |                                                |                                                                                                                           |                                  |       |

Business Name: \_\_\_\_\_ Submitted By (Name): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone/Fax: \_\_\_\_\_ Date: \_\_\_\_\_

Consultant's Price/Total: \$ \_\_\_\_\_  
SB Subconsultant(s)  
Price/Total: \$ \_\_\_\_\_  
Non-Small Business  
Subconsultant Price/Total: \$ \_\_\_\_\_

Grand Total: \$ \_\_\_\_\_

**APPENDIX #2**  
**HOUSTON COMMUNITY COLLEGE**  
**SUBCONSULTANT PROGRESS ASSESSMENT FORM**

Project No./Title: \_\_\_\_\_  
Reporting Period: From \_\_\_\_\_ To \_\_\_\_\_ Prime Consultant: \_\_\_\_\_  
Total Contract Amount (Prime Consultant): \$ \_\_\_\_\_

**Instructions:** This form shall be completed and signed by an officer of the prime consultant's company and shall be attached to each invoice for payment submitted to HCC's Accounting Dept.

| List Subconsultant(s) name below | Total Subcontract Amount | Amount Paid This Period | Total Paid to Date |
|----------------------------------|--------------------------|-------------------------|--------------------|
|                                  | \$                       | \$                      | \$                 |
|                                  |                          |                         |                    |
|                                  |                          |                         |                    |
|                                  |                          |                         |                    |
|                                  |                          |                         |                    |
|                                  |                          |                         |                    |

I hereby certify that \_\_\_\_\_ has made timely payments from proceeds of prior payments, and will **(Prime Consultant)** make payments within five (5) calendar days of receipt of funds now due from HCC to our subconsultant(s) in accordance with the contractual arrangements with them.

Signature: \_\_\_\_\_

Name (Print or Type): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Telephone: \_\_\_\_\_

**APPENDIX #3**  
**HOUSTON COMMUNITY COLLEGE**

## SUBCONSULTANTS/SUBCONTRACTORS/SUPPLIERS PAYMENT CERTIFICATION FORM

- Instructions:**
1. This form shall be completed and signed by an officer of the subconsultant's company for each payment received from the prime consultant and shall be returned to the prime consultant for its submission to HCC.
  2. The prime consultant shall attach this completed form to each invoice for payment submitted to HCC's Accounting Dept.

PROJECT NO./TITLE: \_\_\_\_\_

NAME OF SUBCONSULTANT: \_\_\_\_\_

ADDRESS:

I hereby certify that the above firm has received payment on \_\_\_\_\_ from \_\_\_\_\_  
(Date) (Prime Consultant)

In the amount of \$\_\_\_\_\_ as full payment of our Invoice No. \_\_\_\_\_ dated \_\_\_\_\_

for work performed during \_\_\_\_\_ under Contract/Project No. \_\_\_\_\_  
(Enter Time Period)

Signature: \_\_\_\_\_

Name (Print or Type) : \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Telephone: \_\_\_\_\_

**EXHIBIT D  
ADDITIONAL SERVICES PROPOSAL FORM**

**[INSERT DATE HERE]**

Re:

Gentlemen:

Please refer to the Agreement dated between Houston Community College ("Owner") and the undersigned ("A/E") as amended to the date hereof (such agreement as so modified and amended being hereafter called the "Agreement") pursuant to which A/E is to perform certain services. The terms which are defined in the Agreement shall have the same meanings when used in this letter.

1. Owner has requested the performance of the services described below which A/E deems to be Additional Services.

(Description of Services.)

2. A/E agrees to perform the Additional Services described above subject to and in accordance with the terms and provisions of the Agreement for a fee which will be determined in accordance with the Agreement but which will not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and for reimbursement of expenses in accordance with the Agreement incurred solely in connection with the performance of such Additional Services, but which reimbursement for expenses will not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

3. A/E will perform the services in accordance with any schedule attached hereto (attach schedule if applicable), but in any event not later than \_\_\_\_\_ (\_\_\_\_\_) days after A/E is authorized to proceed.

If the foregoing is acceptable to you, please so execute by signing the enclosed copy of this letter at the space provided for this purpose and by inserting the date upon which A/E is authorized to commence performance of the Additional Services described in Paragraph 1 above.

Sincerely yours,

[INSERT A/E'S HERE]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. A/E is  
authorized to commence performance of the Additional Services on \_\_\_\_\_, 20\_\_\_\_.

OWNER

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_