

**RFQ 20-09 ARCHITECT AND ENGINEERING SERVICES
FOR NEW FIRST RESPONDERS TRAINING CENTER**

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

THIS AGREEMENT made effective on _____, 2019, 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 _____ ("Architect"), whose main office address is _____ (individually, "Party" and collectively, "Parties").

RECITALS

WHEREAS, The Architect agrees to provide professional design services for the _____ project (the "Project") as hereinafter set forth in the Agreement and the Project Addenda thereto; and

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

NOW, THEREFORE, the Owner and the Architect, for the consideration hereinafter named, agree as follows:

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**TERMS AND CONDITIONS OF AGREEMENT BETWEEN
OWNER AND PROJECT ARCHITECT**

ARTICLE 1

GENERAL INFORMATION

1.1 The Owner's Project Team consists of the Owner and the Owner's Project Manager. It shall be understood and agreed that each and every submission required in this Agreement to be made to the Owner shall also require submission to the Owner's Project Manager.

1.2 This Agreement is intended to set forth the terms and conditions of the Architect's services for all projects assigned to Architect by Owner related to the Project. Upon execution of this Agreement, Owner and Architect shall develop a Project Addendum ("Project Addendum") in the form attached hereto as **Exhibit A**, to be executed by Architect and Owner's representative, setting forth the following information for the Project:

1.2.1 Initial Information for the Project.

1.2.2 A schedule for the performance of the Architect'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 Architect or Owner.

1.2.3 The initial Construction Cost Limitation for the Project.

1.2.4 The Architect's fee for the Project, to be stated as a percentage of the initial Construction Cost Limitation.

1.2.5 An allowance for Architect's reimbursable expenses for the Project.

1.2.6 Architect's Senior Principal and sub-consultants for the Project.

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

1.3 The Owner and Architect 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 Architect 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 Architect shall be responsible for managing the design to stay within this Construction Cost Limitation.

1.4 The initial Construction Cost Limitation sum stated in the Project Addendum shall be the basis for computing the Architect'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.

1.5 Programming services shall be performed by others, and will develop the Owner's description of the scope for the 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.

1.6 It is understood that design of the Project so as to maintain the Program objectives of scope and cost shall continue through to completion and acceptance of Design Development documents. Any adjustment to the scope or quality considered necessary to stay within the Construction Cost Limitation during this period shall be mutually agreed upon and shall be considered a Basic Service and normal to that process.

ARTICLE 2

ARCHITECT'S SERVICES AND RESPONSIBILITIES

2.1 BASIC SERVICES

2.1.1 The Architect'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. 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 Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. The Architect shall submit for prior approval by

the Owner the names of all consultants, persons, or firms, which the Architect 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 Architect enters into with any consultant. The Owner reserves the right, in its sole discretion, to reject the employment by Architect of any consultant for the Project to which Owner has an objection. Architect, 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 Architect 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 Architect agrees 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 Architect, and may conduct audits, to assure that the Plan is being, and was, followed.

2.1.5 The Architect 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 Architect. A Certificate of Insurance indicating the expiration date, and existence, of the Architect'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 Architect shall include the expiration date of the insurance. Architect shall deliver to Owner replacement certificates not less than thirty (30) days prior to the expiration of any such insurance. If, however, Architect 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 Architect under this Agreement. If feasible, Architect shall provide evidence of Director and Officers liability insurance to the extent required by law. Architect 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

\$2,000,000.00
\$4,000,000.00 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

\$2,000,000.00 (per claim)

The Certificates for insurance coverage shall indicate the expiration date of the Architect's professional liability and errors and omissions insurance. The Architect 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 Architect 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 Architect 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 Architect 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 Architect shall cause to be prepared detailed Construction Cost Estimates of the Construction Project in a form acceptable to the Owner following the most recent version of the Construction Specifications Institute (CSI) format. Said estimates shall be submitted with plans and specifications when submitted for review at the completion of each design phase and at the stages of completion of the 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 Architect 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 Architect. 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 Architect. The Construction Cost Estimate should not include compensation to the Architect and the Architect'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 Architect 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 Architect shall mutually agree on changes to the project scope or the Construction Cost Limitation.

2.1.9 The Architect 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 Architect shall incorporate into the documents such corrections and amendments as the Owner requests, unless the Architect has objected in writing and has received the Owner's consent not to make the incorporation to which the Architect objects. If any added costs are incurred at a later date due to a failure to incorporate requested corrections and amendments, the added costs shall be at the Architect's sole expense. Architect 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 Architect's additional services subsequently incurred for such unlisted changes shall be borne or reimbursed by Architect.

2.1.10 The Architect, as part of Basic Services, shall attend Project meetings, communicate with members of the Project team and report progress to the Owner. The Architect 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 Architect agree and acknowledge that Owner is entering into this Agreement in reliance on Architect's special and unique abilities with respect to performing Architect's services, duties, and obligations under this Agreement ("Architect's Services"). Architect

accepts the relationship of trust and confidence established between Architect and Owner by this Agreement. Architect covenants with Owner to use Architect's best efforts, skill, judgment, and abilities in performing Architect's Services. Architect covenants to perform Architect's Services diligently and to further the interests of Owner in accordance with Owner's requirements and procedures. Architect covenants to perform Architect's Services (i) in accordance with the usual and customary professional standards of the architectural profession for those architectural 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 Architect's Services. Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

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

2.1.12 Architect shall call to Owner's attention anything of any nature in Architect's drawings and specifications and any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Architect (by Owner or any other party) which Architect regards in Architect'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 Architect's responsibilities or obligations hereunder in a case where such documents or data are furnished unless Architect advises Owner in prompt written notice that in Architect's professional opinion such documents or data are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes Architect to proceed in accordance with the documents or data as originally given.

2.1.13 Architect shall exercise usual and customary professional care when performing its services so that Architect's Services shall be accurate and free from any material errors or omissions. Architect'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 Architect be released from any liability by reason of such approval by Owner, it being understood that Owner at all times is ultimately relying upon Architect's skill and knowledge in performing Architect's services. Owner shall have the right to reject any portion of Architect'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 Architect, and prompt notice of any such rejection shall be given by Owner to Architect. Architect 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 Architect, or in connection with the Architect's Services, or the services of Architect's consultants or other persons employed by Architect, in the performance of any of the provisions of this Agreement.

Should the Architect 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 Architect, and Architect shall reimburse Owner upon demand for all expenses incurred by Owner to effect such correction or remedy. This commitment by Architect 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 Architect shall not proceed beyond the phase of design authorized by the Owner, except at the Architect's own financial risk.

2.1.15 In the performance of Architect's obligations hereunder, Architect agrees to furnish efficient business administration and supervision and to use Architect's efforts to design the Project in accordance with the customary standard of care. The Architect 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 Architect, Architect shall devote such time and in-house personnel as may be required to perform Architect's Services hereunder. Unless and until Owner grants its prior written approval to any substitution, or requests any substitution, Architect's Senior Principal responsible for completing the Architect'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 Architect. The Senior Principal shall act on behalf of Architect with respect to all phases of Architect'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 Architect pursuant to this Agreement are damaged or destroyed by fire or other casualty, Architect shall prepare or provide new copies of any such work materials that are so damaged or destroyed, unless Architect or Owner has a complete and undamaged set thereof.

2.1.18 Architect 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 Architect's design for the Project and the construction of the Project. The Architect 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 Architect to perform its services free from material errors and omissions, and so that Architect's design will be properly coordinated with existing systems and construction.

This investigation shall be accomplished 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 Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. The Architect 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 Architect 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 Architect 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 VERIFICATION PHASE

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

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

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

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

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

The Architect will analyze the existing building assessment, program of spaces, and preliminary schematic design and verify alignment of the project scope and budget. Schematic Design Verification will include the following steps:

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

2.2.3 The Architect 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 Architect shall obtain Owner's written acceptance of the Schematic Design Verification documents and approval of the Architect's preliminary Construction Cost Estimate.

2.2.5 The Schematic Design Verification 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 Architect 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 Architect shall submit the Schematic Design Verification 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 Architect 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 Architect shall furnish and deliver to the Owner **two (2)** printed sets of Design Development documents.

2.3.3 The Architect 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 Architect shall obtain Owner's written acceptance of the Design Development documents and approval of the mutually established Construction Cost Limitation.

2.3.5 The Architect 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 The Architect 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 The Architect 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 The Architect 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 Architect 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 Architect 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 Architect will provide the Owner's Project Team additional information, including Shop Drawings, Product Data, Samples and other similar submittals, in order to construct the Work.

2.4.3 The Architect, at 50%, 75% & 95% completion, shall furnish and deliver to the Owner's Project Team complete sets of all plans, drawings and specifications in connection with the Work for review. The Architect 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 Architect 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 Architect 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 Architect 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 Architect, 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 Architect 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 Architect shall assist the Owner and the Owner's Project Manager 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 Architect 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 Architect 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 Architect, 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. Architect 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 Architect 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 Architect shall review the bid of the apparent low bidders or proposers and inform Owner's Project Team in writing of its findings and recommendations. For proposers selected by qualifications and by competitive sealed proposals, the Architect shall investigate qualifications and other pertinent proposal information and inform the Owner's Project Team 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 Architect, 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 Architect 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 Architect's obligation to provide Basic Services under this Agreement, will terminate at the expiration of the Project's one-year warranty period. The Architect 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 Architect 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 Architect shall review and make recommendations to Owner's Project Team 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 Architect 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 Architect shall be a representative of the Owner during the Construction Phase, and shall advise and consult with the Owner and the Owner's Project Manager. The Architect 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 Architect shall visit the site at least once each week 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. Architect and each sub-consultant shall submit written reports of such visits and meetings. However, the Architect 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 Architect shall keep the Owner and the Owner's Project Manager 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. Architect shall notify Owner, the Owner's Project Manager and the general contractor in writing of any portions of the work which Architect 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, Architect shall make its site representative available and shall consult with Owner, Owner's Project Manager 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 Architect 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 Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.9 The Architect shall determine the amounts owing to the Contractor based on inspections 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 Architect to the Owner, based on the Architect'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 Architect'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 Architect 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 Architect shall be the interpreter of the technical requirements of the Contract Documents and the judge of the performance thereunder by the Contractor. The Architect shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner, the Owner's Project Manager 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 Architect 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 Architect'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 Architect shall have the responsibility and the authority to reject Work which does not conform to the Contract Documents. Whenever, in the Architect's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect 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 Architect 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 Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.6.16 Architect 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 Architect 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 Architect 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 Architect 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 Architect, the extra expenses will be treated as Additional Services.

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

2.6.19 Architect 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 Architect to ensure satisfaction of the Project closeout requirements as set forth in the Uniform General and Supplementary Conditions for HCC.

2.6.20 Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect 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

Architect shall perform all of Architect'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. Architect shall at all times provide sufficient personnel to accomplish Architect's services within the time limits set forth in the schedules for the Project.

2.8 PROJECT MANAGEMENT SOFTWARE

The Owner has adopted e-Builder® ASP Project Management Communication Software, which Architect shall be required to utilized for all communications relating to the Project, as set forth in **Exhibit D**. Architect shall be responsible for purchasing the requisite licenses necessary for Architect's use on the Project.

ARTICLE 3

THE OWNER'S RESPONSIBILITIES

3.1 Owner will review the Architect'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 Architect other than payment for Programming Services provided by Architect 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 Project Team will provide a preliminary project budget and timeline for the Project, and other all other information necessary for Architect 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 and the Owner's Project Manager shall examine the documents submitted by the Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect'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 Architect and equitable back charges against the Architect, it being understood that Owner shall have the right to withhold from payments due Architect such sums as necessary to protect Owner against any loss or damage which may result from negligence by Architect or failure of Architect to perform Architect'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 Architect 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 or Owner's Project Manager 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 Architect; however, Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

3.8 The Owner's Project Team will review the Architect'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 Architect as promptly as possible after receipt of the documents for review. The Owner may require the Architect 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 Architect'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 Architect of the contractual obligations for verification of the Work and Contract Administration.

ARTICLE 4

PAYMENTS TO THE ARCHITECT

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. Architect 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, Architect 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 Architect hereunder if any one or more of the following conditions precedent exist:

- a) Architect 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) Architect 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 Architect; 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 Architect hereunder unless and until Architect, at Architect'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 Architect of any of Architect's obligations hereunder or liabilities with respect to such services.

4.1.4 Architect 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 Architect 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 Architect under and in conformity with the Architect'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 Architect or Architect'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 Architect or Architect's successors have or may have against Owner under the provisions of this Agreement except those previously made in writing and identified by Architect as unsettled at the time of the final request for payment.

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

4.3 PAYMENTS WITHHELD

No deductions shall be made from the Architect'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 Architect may be liable.

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 Architect 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 Architect'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, Architect shall prepare for acceptance by the Owner an Additional Services proposal, which shall describe in detail the nature or scope of the Additional Services, the basis upon which Architect has determined that such services are Additional Services, and which shall set forth the maximum amount of fees and reimbursable expenses for which Architect 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 be limited to: Constructability Services; Commission Services; LEED Silver Certification Investigative Testing to Confirm Existing Conditions, or other services not included in the Basic Services. Architect 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 Architect 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 Architect to complete its responsibilities hereunder free of material errors and omissions. Architect 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 Architect and the Architect's employees and consultants incurred solely and directly

in connection with Architect'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 Architect 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 Architect and the Architect's consultants.

5.5 Owner shall designate and set forth in the Project Addendum an allowance for Reimbursable expenses, which shall be in addition to the Architect's fee for Basic Services. No Reimbursable expenses in excess of the allowance set forth in the Project Addendum shall be incurred by Architect or payable by Owner without the Owner's prior written approval of such expenses. Architect 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

ARCHITECT'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 Project Team, 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 Architect's billings, certificates, and statements, either before or after payment therefore, by (1) inspecting the books and records of Architect during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Architect'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 Architect 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 Architect remains as the Architect, has resigned, this Agreement has been terminated, Architect's scope of services has been modified, or the services herein have been completed. If this Agreement is terminated, Architect hereby consents to the employment by Owner of a substitute Architect to complete the services under this Agreement, with the substitute Architect having all of the rights and privileges of the original Architect. The Drawings and Specifications shall not be used either by the Owner or the Architect 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 Architect'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 end one year following substantial completion of the latest Project in time for which there is a Project Addendum. 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 Architect 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 Architect, the Architect shall be compensated for all services satisfactorily performed to the termination date, together with approved Reimbursable Expenses then due, provided Architect 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 Architect prior to termination.

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

8.5 As of the date of termination of this Agreement, Architect shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by Architect in connection with Architect'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 Architect for the Scope of Services provided, in accordance with Article 4, Payments to the Architect, and the other Terms and Conditions of this Agreement, as follows:

9.1 BASIC COMPENSATION

91.1 FOR BASIC SERVICES, as described in Article 2, and any other services included as part of Basic Services, Basic Compensation shall be computed in accordance with the formula below, with numbers to be set forth in the Project Addendum described in Paragraph 1.2:

Construction Cost Limitation	\$		x	%	=	\$	Fee
Basic Service Fee							
Reimbursable Expenses			=			\$	
(Not to Exceed)							

Therefore, Lump Sum not to exceed \$

The rate schedule listed below is to be used for Programming Services provided in advance of the establishment of the Project Addendum defined in Paragraph 1.2, as well as for Additional Services defined in Article 5. Architect's hourly billing rates under for such services shall be:

Principal	\$ _____ /Hr
Project Director/Senior Project Manager	\$ _____ /Hr
Senior Associate/Project Manager	\$ _____ /Hr
Senior Project Architect	\$ _____ /Hr
Architect	\$ _____ /Hr
Project Coordinator	\$ _____ /Hr
Intern Architect I	\$ _____ /Hr
Intern Architect II	\$ _____ /Hr
Administrative Staff	\$ _____ /Hr

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:	14%
Design Development Phase:	15%
Construction Documents Phase:	35%
Bidding or Negotiation Phase:	8%
Construction Phase:	26%
1 Year Warranty Phase	2%

9.1.3 The Owner may require the Architect 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 Architect'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 Architect agree in accordance with the Terms and Conditions of this Agreement that if the scope of the Project or description of the Architect'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 ARCHITECT 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:

- a. A pre-established lump sum amount.
- b. As a pre-established percent of the cost of the item in question.

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 Architect 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 Architect, the Architect'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 ARCHITECT

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 Architect's invoice. Architect 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 Architect, 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 Architect, and Architect'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 Architect 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 Architect.

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. Architect recognizes that Architect is engaged as an independent contractor and acknowledges that Owner shall have no responsibility to provide Architect or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Architect, in accordance with Architect's status as an independent contractor, covenants and agrees that Architect shall conduct Architect's Services consistent with such status, that Architect will neither hold Architect out as nor claim to be an officer, partner, employee or agent of Owner by reason hereof, and that Architect 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 Architect 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. Architect hereby agrees to make Architect's own arrangements for any of such benefits as Architect may desire and agrees that Architect 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 Architect 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 Architect and Owner may terminate this Agreement without further duty or obligation hereunder. Architect 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 Architect in the performance of services for Owner, which is not generally known to the public, shall be confidential and Architect shall not, beginning on the date of first association or communication between Owner and Architect 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 Architect's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Architect shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Architect 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. Architect shall obtain assurances similar to those contained in this Subparagraph from persons, contractors, and subcontractors retained by Architect. Architect acknowledges and agrees that a breach by Architect of the provisions hereof will cause Owner irreparable injury and damage. Architect, 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 Architect a representative to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. Architect shall act only upon instructions from such representative unless otherwise specifically notified to the contrary.

12.11 Records. Records of Architect 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 Dispute Resolution.

a. To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by Owner and Architect to attempt to resolve any claim for breach of contract made by Architect:

(1) Architect's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Architect shall submit written notice, as required by subchapter B of Chapter 2260, to Owner in accordance with the notice provisions in this Agreement. Architect's notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that Owner allegedly breached, the amount of damages Architect seeks, and the method used to calculate the damages. Compliance by Architect with subchapter B of Chapter 2260 is a required prerequisite to Architect's filing of a contested case proceeding under subchapter C of Chapter 2260. The Chief Administrative Office of Owner, or such other officer of Owner as may be

designated from time to time by Owner by written notice thereof to Architect, shall examine Architect's claim and any counterclaim and negotiate with Architect in an effort to resolve such claims.

(2) If the parties are unable to resolve their disputes under subparagraph (1) of this section, the contested case process provided in subchapter C of Chapter 2260 is Architect's sole and exclusive process for seeking a remedy for any and all of Architect's claims for breach of this Agreement by Owner.

(3) Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Agreement by Owner nor any other conduct, action or inaction of any representative of Owner relating to this Agreement constitutes or is intended to constitute a waiver of Owner's or the state's sovereign immunity to suit and (ii) Owner has not waived its right to seek redress in the courts.

b. The submission, processing and resolution of Architect's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

c. Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Architect, in whole or in part. Owner and Architect agree that any periods set forth in this Agreement for notice and cure of defaults are not waived, delayed, or suspended by Chapter 2260 or this section.

d. It is agreed that such process is not invoked if Owner initiates the dispute by first bringing a claim against Architect. If Owner makes a claim against Architect and Architect then makes a counterclaim against Owner as a claim under Chapter 2260 and in compliance therewith, the Owner's original claim against Architect does not become a counterclaim and is not subject to the mandatory counterclaim provisions of Chapter 2260 of the *Texas Government Code*.

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
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

and the Owner's Project Manager:

If to Architect: _____
Attn: _____
Address: _____

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 Architect's services to Owner are unique, which gives Architect a peculiar value to Owner and for the loss of which Owner cannot be reasonably or adequately compensated in damages; accordingly, Architect acknowledges and agrees that a breach by Architect of the provisions hereof may cause Owner irreparable injury and damage. Architect, 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 Intellectual Property. Architect certifies that any documents, drawings, specifications, data, work product(s), deliverables, designs, implementation, know how, or any other tangibles and intangibles prepared, designed, or produced by the Architect in performing the Services under this Contract ("Work Product") are the Owner's property. Neither the Architect nor any subcontractor, consultant, or employee of the Architect shall own or claim a copyright nor will any other form of intellectual property right in the Work Product, an Owner own them and have all common law, statutory, and other reserved rights, in addition to the copyright, upon creation of the Work Product. TO this end, Architect agrees and does hereby assign, grant, transfer, and convey to the Owner, tis successors and assigns, Architect's entire right, title, interest and ownership in and to such Work Product, including, without limitation, the right to secure copyright registration. Architect confirms that the Owner shall own Architects' right, title, interest in and to, including the right to use and reproduce, to perform publicly, and to display, all such Work Product, whether or not such Work Product constitutes a "Work Made for Hire" as defined

in 17 U.S.C. §201(b). Architect shall obtain a similar grant of rights in favor of the Owner from any subcontractor performing Services on the Project.

- a) The provisions of this Section survive the expiration or earlier termination of the Contract.

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

12.17 Intellectual Property Indemnification. Architect 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, ARCHITECT 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, Architect, 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 Architect have executed and delivered this Agreement as a sealed instrument as of the date first above written.

OWNER:
HOUSTON COMMUNITY COLLEGE SYSTEM

By: _____

Name: Cesar Maldonado

Title: Chancellor

Date: _____

Architect: _____

By: _____

Name: _____

Title: Principal

Date: _____

CONTENT APPROVED:

General Counsel

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

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Exhibit A

PROJECT ADDENDUM No. _____ for _____ College

Between HCC (“Owner”) and _____ (“Architect”)

I. INITIAL INFORMATION

Project Name/Description: _____

Project Address: _____

HCC Facilities Staff Project Manager: _____

Project Manager Representative: _____

Architect’s Representative for Project: _____

The Architect’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 \$ _____ x _____ % = \$ _____ (Fee)

Reimbursable Expenses Allowance (Not to Exceed) = \$ _____

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

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

OWNER:
HOUSTON COMMUNITY COLLEGE SYSTEM

By: _____
Name: Cesar Maldonado
Title: Chancellor

Date: _____

ARCHITECT: _____

By: _____

Name: _____
Title: Principal

Date: _____

CONTENT APPROVED:

E. Ashely Smith
General Counsel, HCC

EXHIBIT B

PROJECT MANAGEMENT SOFTWARE

1.1 SUMMARY

- A. Project Management Communications: The Architect 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, the Project Managers, 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, the Project Managers, 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, the Project Managers, 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, the Project Managers, 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 location¹ 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 system² 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).

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

² 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 contractors or as subcontractors to other prime contractors to 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 Contractor 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 Contractor 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 Contractor agrees to enter into subcontractor agreements for the Services that are identified on the form entitled Contractor and Subcontractor/Supplier Participation. The Contractor'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 Contractor/Contracts for Services

The Contractor 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 Contractor 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 Contractor shall be expected to pay the student(s) at least the minimum wage required by law. HCC shall provide the Contractor 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**

der/offerer 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: Small Business (SB) and Certification Status, if any (i.e. SB – COH, METRO, etc.)	Percentage of Contract Effort
Name: Address: City: State: Zip: Phone: Fax: E-mail: Attach separate sheet if more space is needed.			
SMALL BUSINESS SUBCONSULTANT(S) Attach separate sheet if more space is needed.			
Name: Address: City: State: Zip: Phone: Fax: E-mail: Attach separate sheet if more space is needed.			
NON-SMALL BUSINESS SUBCONSULTANT(S) Attach separate sheet if more space is needed.			
Name: Address: City: State: Zip: Phone: Fax: E-mail: Attach separate sheet if more space is needed.			
Name: Address: City: State: Zip: Phone: Fax: E-mail: Attach separate sheet if more space is needed.			

Name: _____ Submitted By (Name): _____

Address: _____ 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	
	\$	\$	\$

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: _____