



**Procurement  
Operations**

**Request for Qualifications**

**For**

**Architectural and Engineering Services**

**San Jacinto Memorial Building Renovation, Central College**

**Project No. 11-40**

# REQUEST FOR QUALIFICATIONS

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**HOUSTON COMMUNITY COLLEGE**  
**REQUEST FOR QUALIFICATIONS**

August 8, 2011

Subject: Request for Qualifications (RFQ) for Architectural and Engineering Services

HCC Project No. 11-40

**I. General**

The Houston Community College ("HCC") is seeking qualification statements from firms interested in providing HCC with Architectural and Engineering services for the renovation of the San Jacinto Memorial Building located in mid-town Houston at HCC Central College, 1300 Holman Avenue, Houston, TX. The selected firm will be expected to perform the services in accordance with the Scope of Services described in Section VII and in accordance with the requirements of this solicitation.

HCC reserves the right to reject any or all qualification submittals or to accept any qualification submittals it considers most favorable to HCC, or to waive irregularities in the qualification and submittal process. HCC further reserves the right to reject all qualification submittals and terminate the solicitation process or seek new qualification submittals when such procedure is reasonably in the best interest of HCC.

This RFQ solicitation does not in any way obligate HCC to award a contract or pay any expense or cost incurred in the preparation and submission of qualification statements responding to this RFQ.

All applicable attachments contained in the RFQ shall be completed. Failure to do so may result in the firm's Qualifications Submittal being declared non-responsive to the solicitation requirements.

**Note:** All applicable documents contained in this RFQ shall be signed and notarized.

Information provided in response to the Request for Qualifications is subject to the Texas Public Information Act and may be subject to public disclosure.

HCC reserves the right to reject any or all submittals, negotiate changes in the scope of services sought, and waive technicalities or irregularities in the RFQ. This RFQ does not obligate HCC to select a particular firm or individual for any of the services specified in the RFQ. HCC shall not be responsible or liable for any expenses or costs incurred by any party responding to the RFQ.

**II. Pre-proposal Meeting:** A non-mandatory pre-proposal meeting will be held in the Central College Learning HUB/Science Building located at 1300B Holman (Conference Room LH100), Houston, TX 77004 on Thursday, August 25, 2011 at 10:00 A.M. (local time).

**III. Document Submission:**

Interested firms shall submit original and **five (5)** copies of their statement of qualifications documents to the below address no later than Tuesday **September 13, 2011 @ 2:00 P.M.** (local time). Original and copies of the submission should be accompanied by a CD or flash drive with electronic copies of the submission. The electronic copies should be in non-editable .PDF format and should include the entire submission.

**Houston Community College**  
**Procurement Operations**  
**Attn: Shiela Perla, Senior Buyer**  
**3100 Main Street (11th Floor, Room No. 11A06)**  
**Houston, Texas 77002**  
**Architectural and Engineering Services, Ref: Project No. 11-40**

**Please complete and return the following documents in your statement of qualifications package:**

- Response to Section V
- Attachment No. 1 Proposer/Contract Award
- Attachment No. 2 Determination of Good Faith Effort
- Attachment No. 3 Small Business Unavailability Certificate
- Attachment No. 4 Contractor & Subcontractor Participation Form
- Attachment No. 5 Small Business Development Questionnaire
- Attachment No. 6 Proposer Certifications
- Attachment No. 7 Vendor Application
- Attachment No. 8 Conflict of Interest Questionnaire
- Attachment No. 9 Disclosures

**IV. Inquiries**

Interested firms may make written inquiries only concerning this Request for Qualifications to obtain clarification of the requirements. Written inquiries shall be submitted **no later than 3:00 P.M. (local time) on September 1, 2011**, and must be addressed to:

**Houston Community College  
Procurement Operations  
Attn: Shiela Perla, Senior Buyer  
3100 Main Street (11th Floor)  
Houston, Texas 77002**

**Reference: Project No. 11-40 Architectural and Engineering Services  
Fax: (713) 718-2113 or e-mail: [shiela.perla@hccs.edu](mailto:shiela.perla@hccs.edu)**

**V. Document Format and Content**

- A. Responses shall be submitted in 8 ½" x 11" sizes. Responses must be typed and should not include any unnecessarily elaborate or promotional material. The narrative should be brief and concise, yet informative. The response should not exceed twenty (20) single sided pages in length, excluding the Transmittal Letter, table of contents, appendices and the required HCC attachments. The form, content and sequence of the response should follow the outline presented below.
- B. **Document Content:**
  1. **Transmittal Letter/Introduction (1 Page maximum):** The letter of transmittal shall be addressed to Shiela Perla, Senior Buyer, and must, at a minimum, contain the following:
    - Identification of the offering firm(s), including name, mailing address, e-mail address, telephone number and fax number of each firm;
    - Acknowledgement of receipt of RFQ amendments, if any;
    - Name, title, address and telephone number and fax number of a contact person for the firm(s);
    - Identification of any information contained in the response documents which the respondent deems to be, and establishes as, confidential or proprietary and wishes to be withheld from disclosure to others under the Texas Open Records Act (a blanket statement that all contents of the response document are confidential or proprietary will not be honored by HCC); and signature of a person authorized to bind the offering firm to the terms of the response documents.
  2. **Table of Contents**

Immediately following the transmittal letter and introduction, include a complete table of contents for material included in the response documents.
  3. **Company Profile, Qualification and Experience:** Briefly furnish background information about your firm, including date of founding, legal form (sole proprietorship, partnership, corporation/state of incorporation), number and location of offices, and principal lines of business. Certify that the firm is legally permitted or licensed to conduct business in the State of Texas for the services offered.

4. **Proposed Staffing and Organization:** This section should discuss the staff of the responding firm who would provide the Architectural and Engineering Services.
  - a. Identify the Key personnel that would provide A/E services for the San Jacinto Memorial building renovation project. Include a brief description of their unique qualifications as it pertains to this project, availability and commitment of the respondent, its principal(s) and assigned professionals to undertake the project, their job functions and office location. Designate the Principal-in-charge who is authorized to sign and enter into any resulting contract. Detail the Project Manager and Superintendent's experience in similar Architect/Engineering projects. Provide brief resumes (not more than one (1) page) for each key personnel.
  - b. Include and organizational chart, which identifies key personnel and their particular roles in the A/E services.
5. **Past Performance:** This section should establish the ability of the respondent (and its sub-consultant), if any to satisfactorily perform the required Architect/Engineering work. Provide examples of similar project experience. As a minimum, include the following per project experience:
  - Project Name, Location – Year Completed;
  - Brief project description describing your experience, work performed by your firm and work subcontracted.
  - Owner Name, title, and current phone number. HCC may verify all contact information.
  - Construction budget vs. final Construction Cost and describe any difference between them.
6. **Firm's Financial Status:** This section should include financial statements for the **last 3 years**.
7. **Small Business Commitment:** This section should include a statement of the firm's commitment to meet the small business participation goal of **35%**. (Refer to Attachment No. 4, Contractor and Subcontractor Participation Form).

Note: The above information should be furnished for both the prime respondent and any sub-consultant(s) included in the offer.

**NOTES:**

1. **HCC reserves the right to reject any and all submissions as non-responsive that do not meet the criteria as outlined in this solicitation.**
2. **Late submissions will not be accepted.**
3. **HCC is not liable for any costs incurred by person or firm responding to this RFQ.**

**VI. Evaluation Criteria**

Selection of the most qualified firm will be made on the basis of demonstrated competence and qualifications to perform the services. An Evaluation Committee will review statement of qualifications submitted in response to the solicitation. Evaluation factors for the selection of the firm are as follows:

<u>Factor</u>	<u>Weight</u>
• Professional Qualifications and Experience	25
• Staffing and Organization	25
• Past Performance	25
• Firm's Financial Status	10
• Small Business Commitment	15
	-----
	100 Points

A short-list of the top rated firms may be invited for interviews solely on their written responses to this request for qualifications. The **anticipated** schedule for potential interviews is September 21, 2011 and September 22, 2011. Final selection will occur upon completion of the interview process, if any.

**VII. Scope of Services**

**A. Background**

The San Jacinto Memorial Building (approximately 170,000 sq ft., three floors), located at HCC Central College 1300 Holman Avenue, Houston, TX was originally built in 1914 and was renovated several times in the last 100 years. The most recent structural changes to the building are the Auditorium and Gymnasium which were added in the early twentieth century. The intent of this project is to completely renovate and redevelop the building into an administrative and academic classroom building and restore the exterior of the building back to its original design, as much as possible. The finished building interior design shall highlight the past and create spaces for the College's future academic and education environment. The estimated project construction cost is \$35 million.

## **B. Scope**

The majority of the original building interior finishes will be demolished back to the building structure. Existing building components (i.e. exterior fire escapes, windows, two-tone masonry coating) shall be removed and replaced as part of the demolition and renovation work. The existing windows will be replaced with a new modern energy efficient window system. The exterior two-tone masonry coating will be removed to the cast stone masonry and limestone. The existing auditorium and gymnasium will maintain its original appearance and will be updated with new lighting and mechanical system. A new Mechanical, Electrical, Plumbing (MEP) and Information Technology (IT) system is planned to be installed. In the process of upgrading the building to current building codes and installing the new mechanical system, new stairs and mechanical systems towers will be added. The toilets and IT rooms in the building will be consolidated.

Space use programming for the renovated building is complete. Preliminary schematic design and building demolition documents have been prepared and will be made available to the top ranked firms based on qualifications.

The Architect/Engineer ("A/E") will coordinate with the Project Manager ("PM") assigned to the A/E firm to assist in quality control, quality assurance, cost estimating, and other related design, construction administration, and post construction functions.

The A/E will provide professional design services directly and with subcontractors for the following phases:

### **A. Design Phase Services:**

1. Visit the site; evaluate existing facilities and become familiar with all conditions affecting the scope of work.
2. Prepare comprehensive and complete Design Development Drawings (DD) for presentation for PM/HCC.
3. Evaluate and reconcile the project budget and schedules for PM (Program Manager) and HCC.
4. Request all project required information from the PM/HCC and schematic design drawings from assessment team (HCC Project No. 11-06).
5. Prepare/update construction cost estimates for all phases of the design.
6. Make design presentations and/or submittals to PM/HCC .
7. Attend project meetings as required by PM/HCC.
8. Prepare minutes of meetings and distribute to project team and PM/HCC.
9. Incorporate into the design and IT infrastructure & furniture standards necessary for construction.
10. Meet all regulatory requirements for design and construction.
11. Submit review sets of Construction Documents (CD) at 50% and 75% completion. Construction Documents shall include written specifications and civil, structural and MEP disciplines.
12. Perform timely review design for feasibility and compliance with all applicable regulatory agencies.
13. Sign-off on appropriate documentation.
14. Prepare renderings & 3D modeling @ 75% DD to be displayed by PM/HCC.
15. Submit complete and comprehensive Construction Documents to the City of Houston Permit Department.

16. Perform all necessary code research and submit written report to the PM/HCC.
  17. Identify the existence and availability of on-site utilities. All design must incorporate information regarding utilities and designs must comply with utility companies and meet state & local requirements.
- B. Bid & Award Phase Services:
1. Confirm that all Construction Documents are approved and permitted for construction by all applicable agencies and regulatory bodies that have jurisdiction over the project.
  2. Issue bid documents as requested by PM/HCC.
  3. Assist PM/HCC in conducting pre-bid conferences.
  4. Provide clarification to bidders as needed during the bid process.
  5. Assist PM/HCC issue addenda timely, as necessary.
  6. Assist PM/HCC in the bid evaluation process.
- C. Construction Phase Services:
1. Assist PM/HCC in administering the construction contract(s).
  2. Assist PM/HCC in conducting pre-construction conferences.
  3. Make regular on-site construction observations visits and prepare written reports.
  4. Participate in regular construction progress meetings.
  5. Report non-conformance issues to the PM/HCC.
  6. Review all required submittals, stamp and sign-off of each submittal.
  7. Review, verify and certify all contractors' applications for payment.
  8. Review and recommend action on Contractor(s) change proposals.
  9. Review inspection reports and recommend action when needed.
  10. Interpret contract specifications documents.
  11. Review and recommend action on proposed material substitutions.
  12. Prepare punch lists of incomplete or non-conforming work at substantial completion and final completion.
- D. Post Construction Phase Services:
1. Prepare as-built drawings and collect all construction close-out documents for PM/HCC.
  2. Assist in obtaining occupancy permits.
  3. Provide services during warranty periods.
  4. Timely prepared punch list of defective work before end of warranty periods.

### **VIII. Eligibility for Award**

- a. In order for a proposer to be eligible to be awarded the contract, the proposal must be responsive to the solicitation and HCC must be able to determine that the proposer is responsible and has the resources and capacity to perform the resulting contract satisfactorily.
- b. Responsive proposals are those that comply with all material aspects of the solicitation, conform to the solicitation documents and meet the requirements set forth in this solicitation. Proposals, which do not comply with all the terms and conditions of this solicitation will be rejected as non-responsive.
- c. Responsible proposers, at a minimum, must meet the following requirements:
  - Have adequate financial resources, or the ability to obtain such resources as required during the performance of any resulting contract:
  - Be able to comply with the required performance schedule, taking into consideration all existing business commitments:
  - Have a satisfactory record of past performance:
  - Have necessary personnel and management capability to perform any resulting contract:
  - Be qualified as an established firm regularly engaged in the type of business necessary to fulfill the contract requirements:
  - Certify that the firm is not delinquent in any tax owed the State of Texas under Chapter 171, Tax Code; and is not delinquent in taxes owed to the Houston Community College

System; signing and submitting the proposal is so certifying to such non-delinquency:

- Be otherwise qualified and eligible to receive an award under applicable laws and regulations.
- d. Proposer(s) may be requested to submit additional written evidence verifying that the firm meets the minimum requirements described in Section VII. (c) and as necessary to perform the requirements of the solicitation and be determined a responsible proposer. Failure to provide any requested additional information may result in the proposer being declared non-responsive and the proposal being rejected.
- e. A person is not eligible to be considered for award of this solicitation or any resulting contract or to be a subcontractor of the proposer or prime contractor if the person assisted in the development of this solicitation or any part of this solicitation or if the person participated in a project related to this solicitation when such participation would give the person special knowledge that would give that person or a prime contractor an unfair advantage over other bidders.
- f. A person or proposer shall not be eligible to be considered for this solicitation if the person or proposer engaged in or attempted to engage in prohibited communications as described in Section XI of this solicitation

#### **IX. Indemnification**

Consultant shall indemnify, pay for the defense of, and hold harmless District and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of Consultant's negligence, recklessness, or willful acts and/or omission in rendering any services hereunder. Consultant shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, Workers' Compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning Consultant or any employee and shall further indemnify, pay for the defense of, and hold harmless District of and from any such payment or liability arising out of or in any manner connected with Consultant's performance under this Agreement.

#### **X. Small Business Development Program (SBDP)**

a. 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 by ensuring 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.

b. Small businesses whose gross annual income averaged over the past three (3) years does not exceed the Small Business Administration's size standard as specified in 13 CFR Part 121 are eligible to apply for participation in the program.

c. For this solicitation, HCC has established **35%** as its goal for Small Business participation.

d. Good Faith Efforts- HCC will make a good faith effort to utilize small businesses in all contracts. The annual program goals may be met by contracting directly with small businesses or indirectly through subcontracting opportunities. Therefore, any business that contracts with HCC will be required to make a good faith effort to award subcontracts to small businesses. The subcontracting goal applies to all vendors regardless of their status by implementing the following procedures, a contractor shall be presumed to have made a good faith effort:

e. To the extent consistent with industry practices, divide the contract work into reasonable lots.

f. Give notice to SBDP eligible firms of subcontract opportunities or post notices of such opportunities in newspapers and other circulars.

g. Document reasons for rejecting a firm that submitted a proposal for subcontracting opportunities.

To the extent required by the solicitation, the contract shall require the selected contractor to agree to attain small business participation goal or target set forth in the solicitation



## **XI. Prohibited Communications**

Except as provided in exceptions below, the following communications regarding this solicitation or any other invitation for bids, requests for proposal, requests for qualifications, or other solicitation are prohibited:

- [1] Between a potential vendor, subcontractor to vendor, service provider, proposer, Offeror, lobbyist or consultant and any Trustee;
- [2] Between any Trustee and any member of a selection or evaluation committee; and
- [3] Between any Trustee and administrator or employee.

The communications prohibition shall be imposed from the day the solicitation is first advertised through the day the contract documents are signed by all parties. During this period, no HCC Trustee and no vendor shall communicate in any way concerning any pending Solicitation involving the Vendor, subject to the penalties stated herein.

In the event the Board refers the recommendation back to the staff for reconsideration, the communication prohibition shall be re-imposed.

The communications prohibition shall not apply to the following:

- [1] Duly noted pre-bid or pre-proposal conferences.
- [2] Communications with the HCC General Counsel.
- [3] Emergency contracts.
- [4] Presentations made to the Board during any duly-noticed public meeting.
- [5] Unless otherwise prohibited in the solicitation documents, any written communications between any parties, provided that the originator shall immediately file a copy of any written communication with the Board Services Office. The Board Services Office shall make copies available to any person upon request.
- [6] Nothing contained herein shall prohibit any person or entity from publicly addressing the Board during any duly-noticed public meeting, in accordance with applicable Board policies, regarding action on the contract.

Any potential vendor, subcontractor vendor, service provider, bidder, offeror, lobbyist or consultant who engages or attempts to engage in prohibited communications shall not be eligible for the award of any resulting contract under this solicitation. Any other direct or indirect actions taken to unduly influence competitive purposes, to circumvent equal consideration for competitive bidders, or to disregard ethical and legal trade practices will disqualify bidders, vendors, service providers, lobbyist, consultants, and contractors from both this current and any future consideration for participation in HCC orders and contracts.

## **XII. Drug Policy**

HCC is a drug-free workforce and workplace. The manufacture, sale, distribution, dispensation, possession or use of illegal drugs (except legally prescribed medications under physician's prescription and in the original container) or alcohol by vendors or contractors while on HCC's premises is strictly prohibited.

## **XIII. Conflict of Interest**

If a firm, proposer, contractor or other person responding to this solicitation knows of any material personal interest, direct or indirect, that any member, official or employee of HCC would have in any contract resulting from this solicitation, the firm must disclose this information to HCC. Persons submitting a proposal or response to this solicitation must comply with all applicable laws, ordinances, and regulations of the State of Texas Government Code, including, without limitation, Chapter 171 and 176 of the Local Government Code. The person /proposer submitting a response to this solicitation must complete (as

applicable), sign and submit Attachment No. 16, Conflict of Interest Questionnaire Form, and Attachment No. 17, Disclosures – Financial Interest and Potential Conflict of interests with the proposal package. HCC expects the selected contractor to comply with Chapter 176 of the Local Government Code and that failure to comply will be grounds for termination of the contract.

Note: Attachment No. 16 and Attachment No. 17 shall be completed signed and returned to HCC. Enter N/A in those areas on the Attachments that are not applicable to your company. Failure to complete, sign and notarize (if applicable) these Attachments shall render your proposal non-responsive.

**XIV. Ethics Conduct**

Any direct or indirect actions taken to unduly influence competitive purposes, to circumvent equal consideration for competitive bidders, or to disregard ethical and legal trade practices will disqualify vendors and contractors from current and future consideration for participation in HCC orders and contracts.

**XV. Submission Waiver**

By submitting a response to this RFP, the Offerer or respondent agrees to waive any claim it has or may have against Houston Community College System and its trustees, employees or agents arising out of or in connection with (1) the Administration, evaluation or recommendation of any offer or response; (2) any requirements under the solicitation, the solicitation or response package or related documents; (3) the rejection of any offer or any response or any part of any offer or response; and/or (4) the award of a contract, if any.

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**ATTACHMENT NO. 1**

**PROPOSAL/CONTRACT AWARD FORM**

PROJECT TITLE: Architectural and Engineering Services

PROJECT NO.: 11-40

Name of Respondent: \_\_\_\_\_

Federal Employer Identification Number \_\_\_\_\_

(Note: please refer to Attachment No. 14, Vendor Application Instructions)

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

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

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Receipt of Proposal Amendment Number(s): \_\_\_\_\_

In compliance with the requirements of this Request for Qualifications for Architectural & Engineering Services, the undersigned hereby proposes to furnish all necessary resources required to perform the services in accordance with our Statement of Qualifications dated \_\_\_\_\_ and as mutually agreed upon by subsequent negotiations, if any.

The undersigned certifies that he/she has read, understands and agrees to be bound by the requirements and terms and conditions set forth in this Solicitation. The undersigned further certifies that he/she is legally authorized to make the statements and representations in the Solicitation and that said statements and representations are true and accurate to the best of his/her knowledge. The undersigned understands and agrees that when evaluating Statements of Qualifications, HCC relies on the truth and accuracy of the statements and representations presented in the proposal response. Accordingly, HCC has the right to suspend or debar the undersigned from its procurement process and/or terminate any contract award that may have resulted from this solicitation if HCC determines that any statements or representations made were not true and accurate.

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

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

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

State of \_\_\_\_\_

Sworn to and subscribed before me at \_\_\_\_\_, \_\_\_\_\_,  
(City) (State)

this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_

Notary Public for the State of: \_\_\_\_\_

**ATTACHMENT NO. 2**

**DETERMINATION OF GOOD FAITH EFFORT**

DETERMINATION OF GOOD FAITH EFFORT

Proposer \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax Number \_\_\_\_\_

In making a determination that a good faith effort has been made, HCC requires the Proposer to complete this form as directed below:

**Section 1.**

After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the Proposer must determine what portion(s) of work, including goods or services, will be subcontracted. Check the appropriate box that identifies your subcontracting intentions:

Yes, I will be subcontracting portion(s) of the contract.

(If Yes, please complete Section 2, below and Attachments No.3 Contractor/Subcontractor Participation Form and No. 4 SBD Questionnaire)

No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources. (If No, complete Section 3, below.)

**Section 2.**

In making a determination that a good faith effort has been made, HCC requires the Proposer to complete this form Section and submit supporting documentation explaining in what ways the Proposer has made a good faith effort to attain the goal. The Proposer will respond by answering "yes" or "no" to the following and provide supporting documentation.

(1) Whether the Proposer provided written notices and/or advertising to at least five (5) certified small businesses or advertised in general circulation, trade association and/or small businesses focus media concerning subcontracting opportunities.

(2) Whether the Proposer divided the work into the reasonable portions in accordance with standard industry practices.

(3) Whether the Proposer documented reasons for rejection or met with the rejected small business to discuss the rejection.

(4) Whether the Proposer negotiated in good faith with small businesses, not rejecting qualified subcontractors who were also the lowest responsive bidder.

**NOTE:** If the Proposer is subcontracting a portion of the work and is unable to meet the solicitation goal or if any of the above items (1-4) are answered "no", the Proposer must submit a letter of justification.

**Section 3.**

**SELF PERFORMANCE JUSTIFICATION**

If you responded "No" in SECTION 1, please explain how your company will perform the entire contract with its own equipment, supplies, materials, and/or employees.

---

---

\_\_\_\_\_  
(Signature of Proposer)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

**ATTACHMENT NO. 3  
 SMALL BUSINESS UNAVAILABILITY CERTIFICATE  
 PROJECT NO. 11-40 ARCHITECTURAL AND ENGINEERING SERVICES**

**I.** \_\_\_\_\_ **NAME** \_\_\_\_\_ **TITLE** \_\_\_\_\_  
**OF** \_\_\_\_\_ **FIRM NAME** \_\_\_\_\_ **CERTIFY THAT ON** \_\_\_\_\_ **DATE** \_\_\_\_\_

**THE SMALL BUSINESSES LISTED HEREIN WERE CONTACTED TO SOLICIT PROPOSALS FOR MATERIALS OR SERVICES TO BE USED ON THE ABOVE STATED PROJECT.**

<b>DATE</b>	<b>SMALL BUSINESS</b>	<b>TELEPHONE #</b>	<b>CONTACT PERSON</b>	<b>MATERIALS OR SERVICES</b>	<b>RESULTS</b>
1.					
2.					
3.					
4.					
5.					
6.					

TO THE BEST OF MY KNOWLEDGE AND BELIEF, SAID SMALL BUSINESS WAS UNAVAILABLE FOR THIS SOLICITATION, UNABLE TO PREPARE A PROPOSAL THAT WAS REJECTED FOR THE REASON(S) STATED IN THE **RESULTS** COLUMN ABOVE.

THE ABOVE STATEMENT IS A TRUE AND ACCURATE ACCOUNT OF WHY I AM UNABLE TO COMMIT TO AWARDING SUBCONTRACT(S) OR SUPPLY ORDER(S) TO THE SMALL BUSINESS LISTED ABOVE.

**NOTE: THIS FORM TO BE SUBMITTED WITH ALL PROPOSAL DOCUMENTS FOR WAIVER OF SMALL BUSINESS PARTICIPATION  
 (SEE PROPOSER INSTRUCTIONS)**

\_\_\_\_\_  
**PRINT NAME** \_\_\_\_\_ **SIGNATURE** \_\_\_\_\_  
 \_\_\_\_\_  
**TITLE** \_\_\_\_\_ **DATE** \_\_\_\_\_

**HCC PROJECT NO. 11-40 Architectural and Engineering Services**

**ATTACHMENT NO. 4**

**CONTRACTOR AND SUBCONTRACTOR PARTICIPATION FORM**

*PROPOSER/OFFERER PRESENTS THE FOLLOWING PARTICIPANTS IN THIS SOLICITATION AND ANY RESULTING CONTRACT. ALL PROPOSERS/OFFERORS, INCLUDING SMALL BUSINESSES SUBMITTING PROPOSALS AS PRIME CONTRACTORS, ARE REQUIRED TO DEMONSTRATE GOOD FAITH EFFORTS TO INCLUDE SMALL BUSINESSES IN THEIR PROPOSAL SUBMISSIONS.*

CONTRACTOR		TYPE OF WORK TO BE DONE	TYPE OF SMALL BUSINESS CERTIFICATION	PERCENT OF CONTRACT EFFORT	PRICE \$
BUSINESS NAME:					
ADDRESS:					
CONTACT NAME:					
TELEPHONE #/E-MAIL ADDRESS:					
SMALL BUSINESS SUBCONTRACTOR(S)/ATTACH SEPARATE SHEET IF NEEDED					
BUSINESS NAME:					
ADDRESS:					
CONTACT NAME:					
TELEPHONE #/E-MAIL ADDRESS:					
BUSINESS NAME:					
ADDRESS:					
CONTACT NAME:					
TELEPHONE #/E-MAIL ADDRESS:					
NON-SMALL BUSINESS SUBCONTRACTOR(S)/ATTACH SEPARATE SHEET IF NEEDED					
BUSINESS NAME:					
ADDRESS:					
CONTACT NAME:					
TELEPHONE #/E-MAIL ADDRESS:					
BUSINESS NAME:					
ADDRESS:					
CONTACT NAME:					
TELEPHONE #/E-MAIL ADDRESS:					
BUSINESS NAME:					
ADDRESS:					
SUBMITTED BY:					
TELEPHONE/FAX:					
E-MAIL ADDRESS:					
				DATE SUBMITTED	
				CONTRACTOR'S PRICE/TOTAL SMALL BUSINESS	\$
				SUBCONTRACTOR(S) PRICE/TOTAL NON- SMALL BUSINESS	\$
				SUB-CONTRACTOR'S PRICE/TOTAL	\$
				GRAND TOTAL	\$



**ATTACHMENT NO. 5  
SMALL BUSINESS DEVELOPMENT QUESTIONNAIRE**

**Note:** Vendors are to complete this form along with a **copy** of the Contractor and First Tier Subcontractor/Supplier Participation Form

FIRM NAME: \_\_\_\_\_

FIRM ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

TELEPHONE: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

CONTACT PERSON'S NAME AND PHONE NO. \_\_\_\_\_

SIGNATURE OF FIRM'S AUTHORIZED OFFICIAL: \_\_\_\_\_

NAME AND TITLE (Type or Print): \_\_\_\_\_

**COMPANY MAJORITY OWNERSHIP** (Check one in each column)

<u>ETHNICITY</u>	<u>GENDER</u>	<u>LOCATION</u>
<input type="checkbox"/> African American (AA)	<input type="checkbox"/> Male	<input type="checkbox"/> Houston (H)
<input type="checkbox"/> Asian Pacific American (APA)	<input type="checkbox"/> Female	<input type="checkbox"/> Texas (T)
<input type="checkbox"/> Caucasian ( C)		<input type="checkbox"/> Out of State (O)
<input type="checkbox"/> Hispanic American (HA)		Specify State _____
<input type="checkbox"/> Native American (NA)	<input type="checkbox"/> Public Owned (PO)	
<input type="checkbox"/> Other (O) Specify _____		

**BUSINESS CLASSIFICATION**

**DBE** Disadvantaged Business Enterprise     **SB** Small Business  
 **WBE** Women Owned Business Enterprise     **MBE** Minority Business Enterprise  
 **HUB** Historically Underutilized Business     Other: \_\_\_\_\_

Please provide information regarding certifying agency (if any)

<b>Name of Agency</b>	<b>Certificate Number</b>	<b>Expiration Date</b>
_____	_____	_____
_____	_____	_____
_____	_____	_____

**ATTACHMENT NO. 6  
PROPOSER CERTIFICATIONS**

**1. NON-DISCRIMINATION STATEMENT:**

The undersigned certifies that he/she will not discriminate against any employee or applicant for employment or in the selection of subcontractors because of race, color, age, religion, gender, national origin or disability. The undersigned shall also take action to ensure that applicants are employed, and treated during employment, without regard to their race, color, religion, gender, age, national origin or disability. Such action shall include, but shall not be limited to, the following non-discriminatory employment practices: employment, upgrading or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other compensation and selection for training, including apprenticeship.

**2. ASSURANCE OF SBDP GOAL:**

The undersigned certifies that he/she has read, understands and agrees to be bound by the small business provisions set forth in this Solicitation. The undersigned further certifies that he/she is legally authorized to make the statements and representations in the Solicitation and that said statements and representations are true and accurate to the best of his/her knowledge. The undersigned will enter into formal agreement(s) for work identified on the CONTRACTOR AND SUBCONTRACTOR PARTICIPATION form conditioned upon execution of a contract with HCC. The undersigned agrees to attain the small business utilization percentages of the total offer amount as set forth below:

**Small Business Participation Goal = 35%**

The undersigned certifies that the firm shown below has not discriminated against any small business or other potential subcontractor because of race, color, religion, gender, age, veteran's status, disability or national origin, but has provided full and equal opportunity to all potential subcontractors irrespective of race, color, religion, gender, age, disability, national origin or veteran status.

The undersigned understands that if any of the statements and representations are made knowing them to be false or there is a failure to implement any of the stated commitments set forth herein without prior approval of HCC's Chancellor or the duly authorized representative, the Proposer may be subject to the loss of the contract or the termination thereof

**3. CERTIFICATION AND DISCLOSURE STATEMENT:**

A person or business entity entering into a contract with HCC is required by Texas Law to disclose, in advance of the contract award, if the person or an owner or operator of the business entity has been

convicted of a felony. The disclosure should include a general description of the conduct resulting in the conviction of a felony as provided in section 44.034 of the Texas Education Code. The requested information is being collected in accordance with applicable law. This requirement does not apply to a publicly held corporation.

If an individual:

Have you been convicted of a felony? YES or NO

If a business entity: YES or NO

Has any owner of your business entity been convicted of a felony? \_\_\_\_\_

Has any operator of your business entity been convicted of a felony? \_\_\_\_\_

If you answered yes to any of the above questions, please provide a general description of the conduct resulting in the conviction of the felony, including the Case Number, the applicable dates, the State and County where the conviction occurred, and the sentence.

I attest that I have answered the questions truthfully and to the best of my knowledge.

Signed: \_\_\_\_\_

Name of Company: \_\_\_\_\_

Address of Company: \_\_\_\_\_

State of \_\_\_\_\_

Sworn to and subscribed before me at \_\_\_\_\_ (City) \_\_\_\_\_ (State)

this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_

Notary Public for the State of: \_\_\_\_\_

**ATTACHMENT NO. 7**  
**VENDOR APPLICATION INSTRUCTIONS**

The Houston Community College Procurement Operations department has developed an online vendor application. This is designed to allow firms or individuals that are interested in doing business with HCC to register online and become part of our vendor database. Once registered, you will receive a password and personal login information that will allow you to modify your vendor information anytime a change occurs with your company. You will have the flexibility to add or delete commodity lines, update phone numbers and contact information, etc. This database will allow HCC to notify, via email, all companies that match the desired commodity criteria for procurement opportunities within Houston Community College. What a great way to never miss out on an HCC bid or proposal opportunity again.

Please take a moment to go to the Houston Community College Procurement Operations department website and register as a vendor. The website address to access the vendor registration form is [http://hccs.aecglobal.com/Supplier\\_Registration\\_Form.asp](http://hccs.aecglobal.com/Supplier_Registration_Form.asp)

Once you have completed your application, please print out a copy of the completed application and submit it with your completed proposal package. If you do not have internet access you are welcome to use a computer at any HCC library to access the website and register.

**ATTACHMENT NO. 8**

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b>		<b>FORM CIQ</b>
<b>For vendor or other person doing business with local governmental entity</b>		
<p><small>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.</small></p> <p>This questionnaire is being filed in accordance with Chapter 178, Local Government Code by a person who has a business relationship as defined by Section 178.001(1-a) with a local governmental entity and the person meets requirements under Section 178.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 178.006, Local Government Code.</p> <p>A person commits an offense if the person knowingly violates Section 178.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	<b>OFFICE USE ONLY</b>	
<p><b>1</b> Name of person who has a business relationship with local governmental entity.</p>	<p>Date Received</p>	
<p><b>2</b> <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.</p> <p align="center"><small>(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)</small></p>		
<p><b>3</b> Name of local government officer with whom filer has employment or business relationship.</p> <p align="center">_____</p> <p align="center"><small>Name of Officer</small></p> <p>This section (item 3 including subparts A, B, C &amp; D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 178.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?</p> <p align="center"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <p align="center"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?</p> <p align="center"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>D. Describe each employment or business relationship with the local government officer named in this section.</p>		
<p><b>4</b></p> <p align="center">_____</p> <p align="center"><small>Signature of person doing business with the governmental entity</small></p> <p align="center">_____</p> <p align="center"><small>Date</small></p>		

Adopted 06/29/2007

**ATTACHMENT NO. 9  
DISCLOSURES  
FINANCIAL INTERESTS AND POTENTIAL CONFLICTS OF INTERESTS**

Texas Local Government Code Chapter 176 requires that vendors desiring to enter into certain contracts with a local governmental entity must disclose the financial and potential conflict of interest information as specified below.

Vendor shall disclose the financial interest and potential conflict of interest information identified in Sections 1 through 3 below as a condition of receiving an award or contract. Submit this information along with your bid, proposal, or offer. **This form must be received by HCC Office of Systemwide Compliance before the vendor's bid, proposal, or offer will be considered received or evaluated.** Completed forms must be **NOTARIZED** and delivered to:

**Houston Community College  
Attn: Procurement  
3100 Main Street  
Houston, TX 77002**

With a copy to:

**Houston Community College  
Attn: Office of System-wide Compliance, Compliance Officers  
3100 Main. Street  
Houston, TX 77002**

This requirement applies to contracts with a value exceeding \$50,000.

**Section 1 - Disclosure of Financial Interest in the Vendor**

**a.** If any officers or employees of HCC ("individuals") have one of the following financial interests in the vendor (or its principal) or its subcontractor(s), please show their name and address and check all that apply and (include additional documents if needed):

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

- Ownership interest exceeding 10%
- Ownership interest exceeding \$15,000 or more of the fair market value of vendor
- Distributive Income Share from Vendor exceeding 10% of individual's gross income
- Real property interest with fair market value of at least \$2,500
- Person related to or married to individual has ownership or real property interest in Vendor
- No individuals have any of the above financial interests   
(If none, go to Section 2)

**b.** For each individual named above, show the type of ownership/distributable income share:  
sole proprietorship \_\_\_ stock \_\_\_ partnership \_\_\_\_

other (explain) \_\_\_\_\_

c. For each individual named above, show the **dollar value or proportionate share** of the ownership interest in the vendor (or its principal) or its subcontractor (s) as follows:

If the proportionate share of the named individual(s) in the ownership of the vendor (or its principal) or subcontractor of vendor is 10% or less, and if the value of the ownership interest of the named individual(s) is \$15,000 or less of the fair market value of vendor, check here (\_\_\_).

If the proportionate share of ownership exceeds 10%, or the value of the ownership interest exceeds \$15,000 of the fair market value of vendor, show either:

the percent of ownership \_\_\_\_\_%, or  
the value of the ownership interest \$ \_\_\_\_\_

**Section 2 - Disclosure of Potential Conflicts of Interest**

For each of the individuals having the level of financial interest identified in Section 1 above, and for any other HCC individual not identified in Section 1 above check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes," please describe (use space under applicable section-attach additional pages as necessary).

a. Employment, currently or in the previous eighteen (18) months, including but not limited to contractual employment for services for vendor. Yes \_\_\_ No \_\_\_

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b. Employment of individual's spouse, father, mother, son, or daughter, including but not limited to contractual employment for services for vendor in the previous eighteen (18) months.

Yes \_\_\_ No \_\_\_

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**Section 3- Disclosure of Gifts**

For each of the individuals having the level of financial interest identified in Section 1 above, and for any other HCC individual not identified in Section 1 above check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes," please describe (use space under applicable section-attach additional pages as necessary).

a. Received a gift from vendor (or principal), or subcontractor of vendor, of \$250 or more within the preceding 12 months.

Yes \_\_\_ No \_\_\_

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b. Individual's spouse, father, mother, son, or daughter has received a gift from vendor (or principal), or

subcontractor of vendor, of \$250 or more within the preceding 12 months.

Yes \_\_\_\_ No

\_\_\_\_\_  
\_\_\_\_\_

This disclosure is submitted on behalf of

\_\_\_\_\_

(Name of Vendor)

**Certification.** I hereby certify that to the best of my knowledge and belief the information provided by me in this disclosure statement is true and correct. I understand that failure to disclose the information requested may result in my bid, proposal, or offer, being rejected, and/or may result in prosecution for knowingly violating the requirements of **Texas Local Government Code Chapter 176**. I understand that it is my responsibility to comply with the requirements set forth by HCC as it relates to this disclosure. I also understand that I must submit an updated disclosure form within seven (7) days of discovering changes in the significant financial interests of the individuals I identified in Section 1 of this disclosure or if individuals that were not identified, later receive a financial interest in my company or a subcontractor of my company.

Official authorized to sign on behalf of vendor:

Name (Printed) \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**AFFIX NOTARY SEAL ABOVE**

Sworn to and subscribed before me, by the said \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to certify which, witness my hand and seal of office.

**"NOTE: RESPONDENT MUST COMPLETE THE ABOVE "DISCLOSURE OF FINANCIAL INTERESTS AND POTENTIAL CONFLICTS OF INTERESTS" FORM. FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR OFFER MAY RESULT IN YOUR OFFER BEING CONSIDERED AS "NON-RESPONSIVE" TO THIS SOLICITATION."**

For assistance with completing this form, please contact the **Office of System-wide Compliance** at (713)718-8233 or 8295.





**procurement  
operations**

**Sample Contract Documents**

**By and Between**

**Houston Community College**

**And**

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**For  
Architectural and Engineering Services**

**Project No. 11-40**

**ATTACHMENT NO. 10  
SAMPLE CONTRACT**

**ARCHITECT AGREEMENT  
BETWEEN  
HOUSTON COMMUNITY COLLEGE SYSTEM,  
OWNER,  
AND  
[INSERT NAME HERE]**

THIS AGREEMENT made effective on **[INSERT DATE HERE]**, 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 **[INSERT NAME HERE]**, **[INSERT ADDRESS HERE]** (individually, "Party" and collectively, "Parties").

**RECITALS**

WHEREAS, The Architect agrees to perform professional services on the following project: **[INSERT PROJECT DESCRIPTION, LOCATION, AND PROJECT NAME HERE]** as hereinafter set forth in the Agreement; and

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

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

## TABLE OF ARTICLES

### ARTICLES

- 1 Architect's Services and Responsibilities
- 2 The Owner's Responsibilities
- 3 Construction Cost – Definition
- 4 Reimbursable Expenses
- 5 Payments to the Architect
- 6 Architects Accounting Records
- 7 Ownership and Use of Documents
- 8 Term and Termination of Agreement
- 9 Basis of Compensation
- 10 Successors and Assigns
- 11 Extent of Agreement
- 12 Miscellaneous Provisions

### EXHIBITS

**Exhibit A** Additional Services Proposal Form

**Exhibit B** Schedule for Performance of Services

**Exhibit C** Personnel Titles and Hourly Rates

**Exhibit D** Small Business Development Program

Appendix 1 Contractor and Sub-Contractor/Supplier Participation Form

Appendix 2 Progress Assessment Report for Work Sub-Contracted Form

Appendix 3 Subcontractor Payment Certification Form

**Exhibit E** Board Action Item No. \_\_\_\_\_ dated \_\_\_\_\_

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

*\*HCC Office of General Counsel RESERVES THE RIGHT TO AMEND THIS CONTRACT*

Houston Community College Project # \_\_\_\_\_

## ARTICLE 1

### ARCHITECT'S SERVICES AND RESPONSIBILITIES

#### 1.0 BASIC SERVICES

1.0.1 The Architect's Basic Services consist of the five phases described in Paragraphs 1.1 through 1.5, 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

1.0.2 The Owner furnished Facilities Program, described in Article 2, will contain a description of the intended project scope and character with accompanying Project Schedule and Preliminary Project Cost including the Construction Cost Limitation. The Architect shall review these documents to understand the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner. It shall be the Architect's responsibility to conduct his activities so as to achieve these objectives.

The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- a) Commencement of Construction date:

**[INSERT DATE HERE]**

- b) Substantial Completion date:

**[INSERT DATE HERE]**

As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. 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.

1.0.3 The Owner and Architect may rely on the Initial Information. Both parties recognize that such information may materially change, and in that event, the Owner and the Architect shall appropriately adjust the schedule. 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. The Architect shall be responsible for managing the design to stay within this Construction Cost Limitation.

1.0.4 The Construction Cost Limitation sum shall be the basis for computing the Architect's Basic Services fee, and shall remain constant throughout the 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.

1.0.5 It is understood that design of the Project so as to maintain the Facility 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.

1.0.6 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.

1.0.7 The Architect shall 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.

1.0.8 The Architect agrees to allocate work to consultants in accordance with the Small Business Program attached hereto as **Exhibit D**. 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.

1.0.9 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**

The Certificates for insurance coverage shall indicate the expiration date of the Architect's professional liability and errors and omissions insurance. 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.

1.0.10 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.

1.0.11 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**" and Facility Program, if available, a copy of which has been provided to Architect, and which are hereby included herein by reference.

1.0.12 The Architect shall employ and pay a recognized and specialized company acceptable to the Owner to prepare detailed Construction Cost Estimates of the Construction Project in a form acceptable to the Owner following the Construction Specifications Institute (CSI) 2011 format. Said estimates shall be submitted with plans and specifications when submitted for review at the completion of the Design Development 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. 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.

1.0.13 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.

1.0.14 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 existing.

1.0.15 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 to bear the full cost of correcting Architect's Services and the services of its consultants, and others who have acted in reliance thereupon.

1.0.16 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.



1.0.17 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.

1.0.18 The Architect shall not proceed beyond the phase of design authorized by the Owner, except at the Architect's own financial risk.

1.0.19 In the performance of Architect's obligations hereunder, Architect agrees to furnish efficient business administration and superintendence and to use Architect's best efforts to design the Project in the best way and in the most expeditious and economical manner consistent with the interest of Owner and Architect's professional skill and care as defined herein.

1.0.20 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 on **Exhibit C** attached hereto and incorporated herein. The day-to-day Project team will be led by the person or persons as listed on **Exhibit C** attached hereto and incorporated herein, 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.

1.0.21 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.

1.0.22 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.

1.0.23 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.

1.0.24 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.

## 1.1 SCHEMATIC DESIGN PHASE

1.1.1 Based on the mutually agreed upon Facilities Program, Construction Cost Limitation and the Project Schedule, the Architect shall prepare sufficient alternative approaches to design and construction of the Project to satisfy Owner's requirements and shall, at completion of this phase, submit Schematic Design 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 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 drawings and shall specifically conform to Owner's requirements regarding aesthetic design issues.

1.1.2 The Architect shall furnish and deliver to the Owner **four (4)** complete printed sets of Schematic Design documents as reimbursable expenses.

The Architect shall prepare a preliminary evaluation of the Owner's Facilities Program, schedule, budget for the Construction Cost Estimate, Project site and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

1.1.3 The Architect shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.0.12 to confirm adherence to the Construction Cost Limitation and present same with the completed Schematic Design Documents.

1.1.4 Before proceeding into the Design Development Phase, the Architect shall obtain Owner's written acceptance of the Schematic Design documents and approval of the Architect's preliminary construction cost estimate.

1.1.5 The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary buildings plans, sections and elevations; 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.

1.1.6 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.

1.1.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

## 1.2 DESIGN DEVELOPMENT PHASE

1.2.1 Based on the approved Schematic Design Documents and any adjustments to the Facilities 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.

1.2.2 The Architect shall furnish and deliver to the Owner **four (4)** printed sets of Design Development documents.

1.2.3 The Architect shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.0.12 to confirm adherence to the Construction Cost Limitation and present same with the completed Design Development Documents.

1.2.4 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.

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

1.2.6 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.

### 1.3 CONSTRUCTION DOCUMENTS PHASE

1.3.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project Construction Cost Limitation authorized by the Owner, 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.

1.3.2 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 additional information, including Shop Drawings, Product Data, Samples and other similar submittals, in order to construct the Work.

1.3.3 The Architect, at each stage of review, shall furnish and deliver to the Owner complete printed copies of all plans, drawings and specifications in connection with the Work. 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.

1.3.4 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.

1.3.5 The Architect shall pay for 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. All other reproduction costs shall be billed as reimbursable expenses less the amount of state sales taxes, and identified by the Architect as to the project name, number and institution. Addenda documents issued after the bid documents are reproduced shall be supplied as a reimbursable expense.

1.3.6 The Architect shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.0.12 to confirm adherence to the Construction Cost Limitation and present same with the completed Construction Documents.

1.3.7 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The 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.

1.3.8 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.

## 1.4 BIDDING AND PROPOSAL PHASE

1.4.1 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 Prebid or Preproposal 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.

1.4.2 The Architect shall review the bid of the apparent low bidders or proposers and inform Owner 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 in writing of its findings and recommendations.

1.4.3 In the event the lowest acceptable bid 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 or proposal 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 Paragraph 10.1.

## 1.5 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

1.5.1 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 sixty (60) days after Final Payment to the Contractor is made, or when all of Architect's services hereunder have been satisfactorily performed, whichever occurs later. Architect shall participate in the project's one year warranty review.

1.5.2 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 which are hereby incorporated herein by reference.

1.5.3 Architect shall review and make recommendations to Owner 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

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

1.5.5 The Architect shall be a representative of the Owner during the Construction Phase, and shall advise and consult with the Owner. 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.

1.5.6 The Architect shall visit the site at least once each week during the entire construction period, 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 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 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 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 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.

1.5.7 The Architect shall prepare an agenda for, and conduct monthly job conferences for attendance by representatives of the Contractor, major subcontractors, the Architect, and prepare and distribute minutes of the meetings.

1.5.8 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.

1.5.9 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

1.5.10 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.

1.5.11 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 1.5.6 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.

1.5.12 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 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.

1.5.13 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.

1.5.14 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.

1.5.15 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.



1.5.16 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.

1.5.17 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.

1.5.18 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.

1.5.19 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.

1.5.20 Architect shall review, for conformance with the Contract Documents, general contractor's submission of guarantees and warranties.

1.5.21 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.

1.5.22 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.

1.5.23 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.

1.5.24 Architect shall prepare and submit formal as in place drawings to Owner on media acceptable to Owner based off the Contractor's redline drawings.

1.5.25 The Architect shall be available after final payment to advise the Owner regarding Warranty items and to inspect Warranty work during the Warranty period.

## 1.6 ADDITIONAL SERVICES

1.6.1 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, in the form attached hereto as **Exhibit A**, or other format as directed by Owner, 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 are: Programming Services, Constructability Services, and Commission Services. Or services not included in 1.0.1, Architect shall proceed only after written acceptance by Owner of the Additional Services Proposal.

1.6.2 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.

1.6.3 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.

## 1.7 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 schedules described herein so that the desired development and construction schedule for the Project shall be maintained. Architect shall at all times provide sufficient personnel to accomplish Architect's services within the time limits set forth in the schedules for each project. The Architect shall prepare and provide for Owner's review and approval a detailed schedule for performance of services as **Exhibit B**. This shall detail the schedule for completion of each of the phases of services to be performed by Architect pursuant to this Agreement, and of regular meetings to be held by Owner and Architect during each of such phases, including allowances for time required for Owner's and Architect's review and approval of submissions, and for approvals of authorities having jurisdiction over the Project. Changes in this schedule may be made only with the written approval of Owner. Architect shall perform all of its services in accordance with the then-current schedule approved by Owner. This schedule may not be exceeded by Architect.

## ARTICLE 2

### THE OWNER'S RESPONSIBILITIES

2.1 The Owner will provide the Facility Program, or the Owner and Architect may agree that Architect shall prepare a Facility Program as an Additional Service as set forth in this Agreement. The Facility Program will set forth the Owner's description of the project scope, 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. If Architect prepares the Facility Program, then Owner will review the Facility Program when completed and then determine whether to proceed with the Project and authorize commencement of Basic Services. The Owner reserves the right to terminate the Agreement following completion of the Facility Program, and shall have no further obligation to Architect other than payment for services authorized by Owner and provided by Architect prior to such termination in accordance with the terms and conditions of this Agreement.

2.2 The Owner will provide a preliminary project budget and timeline for the Project. The budget will include the Construction Cost Limitation, contingencies for bidding and changes in the Work during construction, and other costs which are the responsibility of the Owner. The schedule will set forth the Owner's plan for milestone dates and completion of the Project.

2.3 The Owner designates representative authorized to act in the Owner's behalf with respect to the Project. The Owner's authorized representative shall examine the documents submitted by the 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 contract, 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.

2.4 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.

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

2.6 The services, information, surveys and reports required by Paragraphs 2.4 through 2.5 inclusive shall be furnished at the Owner's expense.

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

2.8 The Owner 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.

2.9 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.

2.10 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 inspection.

### **ARTICLE 3**

#### **CONSTRUCTION COST – DEFINITION**

3.1 The Estimated Construction Cost shall be the total cost of all elements of the project, including all alternate bids or proposals, designed and specified by the Architect.

3.2 The Estimated Construction Cost 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.

3.3 The estimated Construction Cost does 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 2.

### **ARTICLE 4**

#### **REIMBURSABLE EXPENSES**

4.1 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:

4.1.1 Professional models and renderings.

4.1.2 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 Subparagraphs 1.3.3 and 1.3.4.

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

4.1.4 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.

5.2 Owner shall pay a mark-up not to exceed ten percent (10%) on such reimbursables. Architect shall submit receipts for all reimbursable expenses along with any reimbursement request.

## ARTICLE 5

### PAYMENTS TO THE ARCHITECT

#### 5.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES

5.1.1 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.

5.1.2 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.

5.1.3 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.

5.1.4 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.

5.1.5 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.

5.1.6 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.

## 5.2 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

Payments on account of the Architect's Additional Services as defined in Paragraph 1.6 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.

## 5.3 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.

## 5.4 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 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 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 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 [**INSERT DATE HERE**] and end no later than [**INSERT DATE HERE**], with the option by the Owner to renew the Agreement



for one additional year unless terminated earlier as set forth herein. 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 9 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 9, 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 5, Payments to the Architect, and the other Terms and Conditions of this Agreement, as follows:

#### **9.1 BASIC COMPENSATION**

9.1.1 FOR BASIC SERVICES, as described in Article I, and any other services included as part of Basic Services, Basic Compensation shall be computed as follows:



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 Paragraph 1.6, 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 1.6, 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 4, 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 PAYMENTS TO THE ARCHITECT, an initial payment of Zero (\$0.00) shall be made upon execution of this Agreement and is the minimum payment under the Agreement. It shall be credited to the Owner's account in the final invoice.

9.3.2 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 77226.

9.3.3 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,  
Procurement Operations  
Attn.: Executive Director of Procurement Operations  
3100 Main Street  
Houston, Texas 77002

- (1) With Copies to: Renee S. Byas, General Counsel  
Houston Community College System  
Office of the General Counsel  
3100 Main St, (MC 1144)  
Houston, TX 77002
  
- (2) If to Architect: [INSERT NAME HERE]  
[Street Address]  
Houston, TX [zip]  
Attention: [INSERT NAME HERE]
  
- (3) or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

**12.14 Enforcement.** It is acknowledged and agreed that 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 NEGLIGENT ACTS, ERRORS OR OMISSIONS OF ARCHITECT. IN ADDITION THE OWNER AGREES, TO THE FULLEST EXTENT PERMITTED BY TEXAS STATE LAW, TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE ARCHITECT, ITS OFFICERS, DIRECTORS, EMPLOYEES AND SUBCONSULTANTS AGAINST ANY DAMAGES, LIABILITIES, OR COSTS AS A RESULT OF NEGLIGENT ACTS.

**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: Dr. Mary Spangler  
Title: Chancellor

Architect: [.INSERT NAME HERE]

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

CONTENT APPROVED:

\_\_\_\_\_  
Renee S. Byas  
General Counsel, HCCS

## **EXHIBITS**

Exhibit A -- Additional Services Proposal Form

Exhibit B -- Schedule for Performance of Services

Exhibit C -- Personnel Titles and Hourly Rates

Exhibit D -- Small Business Development Program

Appendix 1 Contractor and Sub-Contractor/Supplier Participation Form

Appendix 2 Progress Assessment Report for Work Sub-Contracted Form

Appendix 3 Subcontractor Payment Certification Form

**EXHIBIT A  
ADDITIONAL SERVICES PROPOSAL FORM**

**[INSERT DATE HERE]**

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Re:

Gentlemen:

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

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

(Description of Services.)

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

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

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

Sincerely yours,

[INSERT ARCHITECT'S HERE]

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

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

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

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2011.  
Architect is authorized to commence performance of the Additional Services on  
\_\_\_\_\_, 20\_\_11.

OWNER

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

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

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

**EXHIBIT B**  
**SCHEDULE FOR PERFORMANCE OF SERVICES**

**NOTE; THIS EXHIBIT WILL BE COMPLETED ON A PROJECT BY PROJECT BASIS.**

**EXHIBIT C**  
**PERSONNEL, TITLES, AND HOURLY RATES;**

## **EXHIBIT D 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 30% 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. For additional information regarding the internship program, please contact Dr. Freddie Wade, Director of Workforce Program Initiatives at (713) 718-7596.



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

- Appendix 1 Contractor and Sub-Contractor/Supplier Participation Form
- Appendix 2 Progress Assessment Report for Work Sub-Contracted Form
- Appendix 3 Subcontractor Payment Certification Form

**APPENDIX #1  
HOUSTON COMMUNITY COLLEGE  
CONTRACTOR AND SUBCONTRACTOR PARTICIPATION FORM**

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

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	Price
<b>CONTRACTOR</b>			
Business Name:			
Business Address:			
Telephone No.:			
Contact Person Name/E-mail:			
<b>SMALL BUSINESS SUBCONTRACTOR(S)</b> (Attach separate sheet if more space is needed.)			
Business Name:			
Business Address:			
Telephone No. :			
Contact Person:			
Business Name:			
Business Address:			
Telephone No. :			
Contact Person:			
<b>NON-SMALL BUSINESS SUBCONTRACTOR(S)</b> (Attach separate sheet if more space is needed.)			
Business Name:			
Business Address:			
Telephone No.:			
Contact Person			
Business Name:			
Business Address:			
Telephone No. :			
Contact Person:			

Business Name: \_\_\_\_\_ Submitted By (Name): \_\_\_\_\_ Contractor's Price/Total: \$ \_\_\_\_\_  
 Address: \_\_\_\_\_ SB Subcontractor (s) Price/Total: \$ \_\_\_\_\_  
 Telephone/Fax: \_\_\_\_\_ Date: \_\_\_\_\_ Non-Small Business Subcontractors Price/Total: \$ \_\_\_\_\_  
 Grand Total: \$ \_\_\_\_\_

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

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

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

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

I hereby certify that \_\_\_\_\_ has made timely payments from proceeds of prior payments, and will  
**(Prime Contractor)**  
 make payments within five (5) calendar days of receipt of funds now due from HCC to our subcontractor(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 subcontractor's company for each payment received from the prime contractor and shall be returned to the prime contractor for its submission to HCC.
  2. The prime contractor shall attach this completed form to each invoice for payment submitted to HCC's Accounting Dept.

PROJECT NO./TITLE: \_\_\_\_\_  
NAME OF SUBCONTRACTOR: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

I hereby certify that the above firm has received payment on \_\_\_\_\_ from \_\_\_\_\_ (Prime Contractor)  
In the amount of \$ \_\_\_\_\_ as full payment of our Invoice No. \_\_\_\_\_ dated \_\_\_\_\_  
for work performed during \_\_\_\_\_ under Contract/Project No. \_\_\_\_\_  
(Enter Time Period)

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

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

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

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

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

**EXHIBIT E**  
**BOARD ACTION ITEM No. \_\_\_\_\_ DATED \_\_\_\_\_**