

12.7 COMPLIANCE WITH OWNER'S POLICIES. While on the premises of Owner Architect warrants and covenants to abide and to cause Consultants and other third parties retained by Architect in connection with the Project to abide by the policies and procedures relative to conduct, action and demeanor applicable to such premises.

12.8 GOOD STANDING; NO TAX DELINQUENCY. Architect warrants and certifies that, upon the effective date of this Agreement, either (1) it is not delinquent in payment of State of Texas corporate franchise taxes, or (2) it is not subject to the payment of such taxes. Architect agrees that any false statement with respect to franchise tax status shall be a material breach hereof, and Owner shall be entitled to terminate this Agreement upon written notice thereof to Architect.

ARTICLE 13 – INSURANCE

13.1 REQUIRED COVERAGES. Prior to commencing performance of its obligations under this Agreement, Architect shall carry and maintain in force until Final Acceptance (as defined in the UGC) at Architect's sole cost and expense, professional liability and errors and omissions insurance with minimum policy limits of Two Million Dollars (\$2,000,000) per claim and Four Million Dollars (\$4,000,000) in the aggregate covering the Services, as well as the following kinds of insurance in the following amounts:

13.1.1 Worker's Compensation: statutory limit – Statutory

13.1.2 Employers Liability: at least \$500,000 per occurrence

13.1.3 Commercial General Liability: \$1,000,000 per occurrence, \$2,000,000 in the aggregate,

Including:

13.1.3.1 Comprehensive Form

13.1.3.2 Premises/Operations

13.1.3.3 Products/Completed Operations (two (2) years)

13.1.3.4 Contractual Independent Contractors

13.1.3.5 Broad Form Property Damage

13.1.3.6 Personal Injury

13.1.3.7 Fire Damage: \$500,000 per occurrence

13.1.3.8 Medical Expense: \$20,000 per occurrence

13.1.4 Commercial Auto Liability: \$1,000,000 combined single limit

13.2 CONSULTANTS' COVERAGES. Architect shall also require that the following Consultants maintain professional liability insurance in the amounts set forth below and in satisfying the requirements of Architect's insurance under Section 13.3.

13.2.1 The Structural Consultant: \$1,000,000 per occurrence.

13.2.2 The Mechanical / Electrical / Plumbing Consultant: \$1,000,000 per occurrence.

13.2.3 The Civil Engineering Consultant: \$500,000 per occurrence.

13.2.4 Other Consultants: an amount acceptable to Owner.

13.3 POLICY REQUIREMENTS. The Architect shall maintain Professional Liability covering wrongful acts, errors and/or omissions, including design errors of the Architect for damages sustained by reason of or in the course of performance of this Agreement for three (3) years after the Project is substantially complete. The Architect shall include the Owner as additional insured on the Commercial General Liability and Automobile Liability policies, and the Worker's Compensation policy shall include a waiver of subrogation in favor of the Owner. Architect shall, provide copies of the required policies and/or endorsements reflecting the coverages required under this Agreement in addition to Certificates of Insurance.

ARTICLE 14 – MISCELLANEOUS

14.1 LIMITATION OF LIABILITY. Except for the obligation of Owner to pay Architect in accordance with ARTICLE 7 above, Owner shall have no liability to Architect or to anyone claiming through or under Architect by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Architect, no present or future partner or affiliate of Owner or any agent, officer, director, employee, or regent of Owner or of TEXAS SOUTHERN UNIVERSITY, or anyone claiming under Owner has or shall have any personal liability to Architect or to anyone claiming through or under Architect by reason of the execution or performance of this Agreement.

14.2 NO WAIVER.

14.2.1 No failure or delay of a party in the exercise of any right given to such party hereunder or by Applicable Law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof or of any breach of any other provision hereof.

14.2.2 Owner is not an architect. No acceptance or approval of documents submitted or services rendered by Architect shall be deemed to release Architect from its obligations to Owner and responsibilities under Applicable Law, or to waive Owner's remedies for Architect's breach, failure or violation of such obligations and responsibilities.

14.3 GOVERNING LAW; VENUE. This Agreement shall be construed in accordance with the laws of the State of Texas. Should litigation arise concerning all or any part of this Agreement, venue shall lie in Harris County, Texas.

14.4 SEVERABILITY. If any provision of this Agreement is for any reason held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision of this Agreement and this Agreement will be construed as if such invalid or unenforceable provision had not been included herein.

- 14.5 NEW LAWS.** Owner and Architect agree that if, after the Effective Date, there is an unforeseeable enactment or change in any Applicable Law affecting this Agreement, the parties will negotiate in good faith to conform the affected terms of this Agreement with the provisions of such enactment or change.
- 14.6 ENTIRE AGREEMENT; NO THIRD PARTY BENEFICIARIES.** This Agreement represents the entire and integrated Agreement between Owner and Architect with respect to the Project. This Agreement supersedes all prior negotiations, representations or Agreements, either written or oral with respect to the Project. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against Owner or Architect. It is agreed by Owner and Architect that this Agreement is intended for the benefit of Owner and Architect only and not for the benefit of consultants (including Consultants), engineers, contractors, subcontractors, including suppliers or any of their employees or agents, or any other person, whether retained by or claiming under Owner or Architect.
- 14.7 AMENDMENTS.** This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.
- 14.8 STATUTORY CERTIFICATIONS.** By signing this Agreement, the undersigned certifies as follows:
- 14.8.1 "Under Section 231.006, *Texas Family Code*, Architect certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate."
- 14.8.2 "Under Section 2155.004, *Texas Government Code*, Architect certifies that the individual or business entity named in this Agreement is not ineligible to receive this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate."
- 14.9 DISPUTE RESOLUTION.** Disputes arising from this Agreement will be handled pursuant to Article 15 of the UGC.
- 14.10 CAPTIONS.** The captions of paragraphs in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 14.11 NOTICES.** Any notice required or permitted to be given under this Agreement must be in writing and may be served by depositing same with the United States Postal Service, addressed to the party to be notified, postage prepaid and in registered or certified form, with return receipt requested; by hand delivery by reputable courier for hand delivery; or by deposit with Federal Express or other reputable overnight courier for overnight delivery. Notice given as required herein will be effective on the date actually received at the address to which such notice was sent, or if delivery is refused or not accepted, such notice shall be effective on the date of such refusal or failure to accept delivery. For

purposes of notice, the addresses of the parties will be as follows or to such other address or facsimile number that the parties may designate in writing.

If to Owner:

Greg Williams, Executive Director
Procurement Services
TEXAS SOUTHERN UNIVERSITY
3443 Blodgett St.
Houston, Texas 77004
Office: 713-313-1962/Fax: 713-313-7944

with a copy to: General Counsel,
TEXAS SOUTHERN UNIVERSITY
3100 Cleburne Avenue
Houston, Texas 77004
Office: 713-313-7950/Fax: 713-313-1906

If to Architect:

Daniel Kornberg, RA, LEED AP
HarrisonKornberg Architects
3131 Eastside Street, Suite 100
Houston, Texas 77098
Office: 713-229-0688/Fax: 713-229-0692

14.12 SUCCESSORS AND ASSIGNS.

14.12.1 Architect binds itself, its partners, successors, assigns and legal representatives to Owner and to the successors, assigns and legal representatives of Owner with respect to all provisions of this Agreement. Architect shall not assign, sublet or transfer its interests in this Agreement without the prior written consent of Owner.

14.12.2 Owner may sell, assign, hypothecate, pledge or otherwise transfer or dispose of all or a portion of the Site, the Project and/or Owner's rights under this Agreement in its sole discretion, without the consent of Architect, so long as (a) the right and obligations of Owner under this Agreement are assigned in connection therewith, and (b) all payments due Architect under this Agreement have been paid current.

14.13 DEATH OR INCAPACITY. If Architect transacts business as an individual, his death or incapacity shall automatically terminate this Agreement as of the date of such event, and neither he nor his estate shall have any further right to perform hereunder, and Owner shall pay him or his estate the compensation payable for any Services satisfactorily rendered

prior to such termination not heretofore paid, reduced by the amount of additional cost which will be incurred by Owner by reason of such termination.

14.14 EXHIBITS. Exhibit A: Hourly Billing Rates, Exhibit B: Owners Preliminary Project Schedule, Exhibit C: Preliminary Facility Program, Exhibit D: Supplemental and special conditions, E: Statement of Work, Exhibit F: Standard Contract Addendum. No provision contained in this Agreement may be modified, amended or deleted in an exhibit to this Agreement unless the exhibit refers specifically to the provision (including its Article and Section number), explains how the provision is modified or amended or states that the provision is deleted, and is signed by Owner and Architect. Subject to the foregoing qualification, the following exhibits are hereby incorporated by reference for all purposes as if fully set forth herein:

IN WITNESS WHEREOF, Owner and Architect have executed this Agreement the day and year first above written.

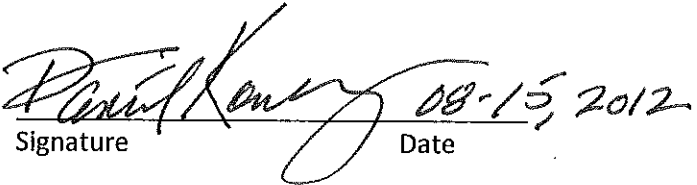
TEXAS SOUTHERN UNIVERSITY

CONTRACTING PARTY

HARRISON KORNBERG ARCHITECTS, LLC

Signature

Date


Signature

08-15, 2012
Date

Dr. John Rudley

Printed Name

President

Daniel Kornberg, RA, LEED AP

Printed Name

Principal Architect

EXHIBIT A - HOURLY BILLING RATES

Harrison Kornberg Architects, LLC

Principals \$185.00
Project Managers \$ 160.00
Architects / Planners / Programmers \$ 160.00
Construction Administrators \$160.00
Job Captains \$150.00
Intern Architects \$120.00
Accounting \$ 175.00
Clerical \$80.00

The Principal Architect for the Project is Daniel Kornberg, RA.

The Principal's contact information is:

Office (voice): 713. 229-0688 x 103

Cellular: 713. 857-4255

Office fax: 713. 229-0692

email: dkornberg@harrisonkornberg.com

Lord, Aeck & Sargent Architecture

Principals -\$225.00
Senior Project Managers -\$150.00
Senior Architects / Planners / Programmers -\$135.00
Architects / Planners / Programmers \$100.00
Senior Architectural Designers \$135.00
Architectural Designers -\$100.00
Intern Architects -\$75.00
Administration -\$70.00

Ensignt Haynes Whaley LLC, Structural Engineers

Senior Principal \$250
Principal \$175
Senior Engineer \$150
Engineer \$125
Staff Engineer \$100
Senior CAD Drafter \$115
Project Drafting Coordinator \$100
CAD Drafter \$ 95
Construction Administrator \$100
Clerical \$ 75

T, G & W Engineers, Inc. MEP Engineers

Principal Engineer, \$180.00 per hour;
Senior Engineer, \$170.00 per hour;
Staff Engineer, \$150.00 per hour;

Engineer, \$140.00 per hour;
 Senior Designer, \$140.00 per hour;
 Staff Designer, \$130.00 per hour;
 Engineer-in-training, \$100.00;
 Designer, \$95.00 per hour;
 Designer/Drafter, \$85.00 per hour;
 Drafter, \$80.00 per hour;
 Administration, \$75.00 per hour;
 Clerical, \$60.00 per hour.

Saenz Bury Engineering, Inc. Civil Engineers

Managing Principal.....	\$ 192.50 per hour
Principal.....	\$ 187.50 per hour
Sr. Vice President	\$ 182.50 per hour
Vice President.....	\$ 177.50 per hour
Sr. Associate	\$ 172.50 per hour
Associate.....	\$ 170.50 per hour
Senior Project Manager	\$ 167.50 per hour
Project Manager.....	\$ 157.50 per hour
Project Director	142.50 per hour
Senior Mechanical Designer	\$ 145.00 per hour
Project Engineer VII	\$ 142.50 per hour
Project Engineer VI	\$ 137.50 per hour
Project Engineer V.....	\$ 132.50 per hour
Engineer Associate VII	\$ 127.50 per hour
Engineer Associate VI	\$ 125.50 per hour
Engineer Associate V.....	\$ 122.50 per hour
Engineer Associate IV.....	\$ 120.50 per hour
Engineer Associate III	\$ 117.50 per hour
Engineer Associate II.....	\$ 114.50 per hour
Engineer Associate I	\$ 109.50 per hour
Land Planner.....	\$ 107.50 per hour
Land Planner II/Business Development.....	\$ 112.50 per hour
Environmental Scientist I.....	\$ 72.50 per hour
Environmental Scientist II	\$ 82.50 per hour
Environmental Scientist III	\$ 97.50 per hour
Senior Engineering Technician III.....	\$ 127.50 per hour
Senior Engineering Technician II	\$ 122.50 per hour
Senior Engineering Technician I	\$ 117.50 per hour
Engineering Technician III	\$ 107.50 per hour
Engineering Technician II	\$ 102.50 per hour
Engineering Technician I.....	\$ 97.50 per hour
Engineering Assistant II.....	\$ 74.50 per hour
Engineering Assistant I	\$ 72.50 per hour
Graphic Designer	\$ 122.50 per hour
CAD Designer III	\$ 107.50 per hour
CAD Designer II.....	\$ 102.50 per hour
CAD Designer I	97.50 per hour
CAD Operator III.....	\$ 92.50 per hour
CAD Operator II	\$ 87.50 per hour
CAD Operator I	82.50 per hour
Registered Professional Land Surveyor III	\$ 144.50 per hour
Registered Professional Land Surveyor II	\$ 129.50 per hour
Registered Professional Land Surveyor I.....	\$ 119.50 per hour

Survey/Technical Coordinator	\$ 114.50 per hour
Senior Survey Technician.....	\$ 109.50 per hour
Survey Technician III	\$ 102.50 per hour
Survey Technician II.....	\$ 97.50 per hour
Survey Technician I	\$ 92.50 per hour
Administrative Assistant III	\$ 77.50 per hour
Administrative Assistant II	\$ 74.50 per hour
Administrative Assistant I.....	\$ 70.50 per hour
Secretary III	\$ 65.50 per hour
Secretary II	\$ 60.50 per hour
Secretary I.....	\$ 57.50 per hour
Courier.....	\$ 60.00 per hour
Construction Observer	\$ 102.50 per hour
Expert Witness.....	\$ 325.00 per hour

TBG Partners Landscape Architecture

STAFF I	\$35 - \$45
STAFF II	\$50 - \$70
STAFF III	\$75 - \$95
STAFF IV	\$ 100 - \$125
STAFF V	\$ 130 - \$200

Construction Cost Systems, Inc. Cost Estimator

Principal	\$223.47/hr
Senior Architectural / Civil / Structural Estimator	\$148.69/hr
Architectural / Civil / Structural Estimator	\$93.67/hr
Senior Mechanical Estimator	\$110.85/hr
Senior Electrical Estimator	\$153.56/hr

Wiss, Janney, Elstner Associates, Inc. Envelope Consultant

Principal	\$235.00
Associate Principal	\$195.00
Senior Associate	\$175.00
Associate III	\$155.00
Associate II	\$135.00
Associate I	\$115.00
Senior Specialist	\$120.00
Specialist	\$100.00
Senior Technician	\$ 90.00
Technician II	\$ 80.00
Technician I	\$ 60.00

4B Technology Inc. IT / AV / Security

Principal	\$150
Project Manager	\$135
Senior Consultant	\$125
Consultant	\$110
Designer	\$110

Contract Administrator	N/A
CADD Technician	\$70
Administrative Staff	\$45

Hughes Associates Life Safety
Senior Engineer \$200.00 per hour

EXHIBIT B - OWNER'S PRELIMINARY PROJECT SCHEDULE

Office of the General Counsel
Owner-Architect Project Agreement

Programming/Schematic Design	6 weeks, Due date: Oct. 12, 2012
Owner review & comments	1 week, Due Date: Oct. 19, 2012
Design Development	2 months, Due Date: Dec. 14, 2012
Owner Review and Comments	1 week, Due Date: Dec. 21, 2012
Cost Estimate & Reconciliation	1 week, Due Date: Jan. 4, 2013
50% Construction Documents	5 weeks, Due Date: Feb. 8, 2013
Owner review & Comments	1 week, Due Date Feb. 15, 2013
90% Construction Documents/ CMAR's GMP	4 weeks, Due Date: Mar. 15, 2013
Owner review & comments	1 week, Due Date: Mar. 22, 2013
Cost Estimate & Reconciliation	1 week, Due Date: Mar. 29, 2013
100% Construction Documents	1 week, Due Date: Apr 5, 2013
<u>Construction</u>	<u>14 months</u>
TOTAL TIME	22 months
Design = 8 months / Construction = 14 months	

EXHIBIT C – PRELIMINARY FACILITY PROGRAM

Pg#	Space ID	Space Name	Space Type	NASF / Space	No. Rooms	Total NASF	Total Occupants	Space Use
	OFF 01	Front Desk	Public	100	2	200	2 - 3 persons	Front desk should be open and adjacent to Main Lobby (and Building Office), with a portion of casework that can be locked
	OFF 02	Building Office	Private	200	2	400	1 - 4 persons	In or near Main Lobby
	OFF 03	Security Office	Private	0	0	0		Incl in Off 02
	SUPP 01	Main Lobby	Public	2400	2	4800	20 - 30 persons	Space should be inviting and have a strong sense of entry; security camera.
	SUPP 02	Main Social Lounge	Public	1280	2	2560	65 persons	Prominent location. Multi-purpose room for recreation, student group activities, and TV Lounge
	SUPP 03	Communal Gathering	Public - residents	640	8	5120	15-20 persons	Can serve as TV / Social space OR as Study Space
	SUPP 04	Laundry Room / Vending	Public - residents	640	6	3840	(1) W+D / 30 persons	Laundry room located on every other floor
	SUPP 05	Housekeeping Closet	Private	60	12	720	0	Elevated mop sink, equipment storage. One per floor per building.
	SUPP 06	Housekeeping Storage	Private	120	2	240	0	Storage of paper supplies, cleaners, and equipment - First Floor. One per building.
	SUPP 07	Maintenance Storage	Private	150	2	300	0	Storage of parts equipment for building. First Floor. One per building.
	SUPP 08	Study Nook	Public - residents	120	40	4,800	4-6 persons	Individual and small group study. One per corridor i.e. 2 / flr / side x6
	SUPP 09	Waste / Recycling	Public - residents	30	20	1000	0	Two per floor per building.
	SUPP 10	Student Mail Boxes	Public	320	2	640		USPS serviced front-loading boxes in Lobby
	SUPP 11	Satellite Food Service	Public	0	0	0		NA
	SUPP 12	Public Restrooms	Public	75	4	300		One pair per building. Located in proximity to the Lobby and Main Social Lounge. If the Lobby and Social Lounge are on adjacent floors, then the M/W restrooms can stack with one per floor.
Subtotal - Common Spaces						24,920		

RESID 01	Freshman Suite	Private	320	389	124,480	778	2 double bedrooms (4 beds) with two bathrooms containing a toilet and shower, plus two lavatories in a small common space.
RESID 02	Returning Student Suite	Private	0	0	0	0	NA
RESID 03	RA rooms	Private	320	20	6,400	20	Two per floor per building.
RESID 04	Hall Managers- 2 BR/1 Ba	Private	960	2	1,920	4	Two bedroom apartment with kitchen. Two entrances - one entrance internal to bldg, second entrance exterior to the bldg.
RESID 05	Assist Hall Manager Suite	Private	0	0	0		
Subtotal - Suites					132,800	802	
Total of Programmed Spaces					157,720		Suites + Common Spaces
Circulation / Utility				25.0%	39,430		
Res Hall Total					197,150	67.36%	Efficiency: Suites / Total
Retail - Convenience Store		Public	1530	1	1530		
Building Total					198,680		

EXHIBIT D – TSU SUPPLEMENTAL AND SPECIAL CONDITIONS

All terms in bold print below are modifications to articles listed in the State of Texas Uniform General Conditions for Construction Contracts

Article 1. Definitions

New Contract Revision means a document which informs the Contractor of a proposed change in the Work, and appropriately describes or otherwise documents such change.

1.44 ***Unilateral Change Order*** means a Change Order issued by the Owner without the agreement of the Contractor. ***A Unilateral Change Order has the same effect as a contract modification.***

Article 2. Wage Rates and Laws Governing Construction

2.3 **Venue for Suits.** ***The venue for any suit arising from the Contract will be in a court of competent jurisdiction in Harris County, Texas.***

Article 3. General Responsibilities of Owner and Contractor

3.1.3.2 The Owner will provide information, equipment, or services under the Owner's control to the Contractor with reasonable promptness. ***The Owner makes no representation as to accuracy or completeness of the site information furnished to Contractor by the owner, and is not responsible for any interpretations or conclusions reached by the Contractor with respect to the information.***

3.3 **Contractor's General Responsibilities.** The Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. The Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination and procedures. ***The Contractor is responsible for having visited the Site and having ascertained all pertinent local conditions such as existing subsurface concealed conditions, location, accessibility and general character of the Site or building, the character and extent of existing work, the character and extent of existing work within adjacent sites, and any other work being performed thereon at the time Contractor's bid or proposal is submitted.***

3.3.15 ***The Contractor shall cooperate with other contractors employed on the Project by the Owner, including providing access to the Site and project information as requested.***

Article 5. Bonds & Insurance

- 5.1.9 Sureties. Sureties shall be listed on the US Department of the Treasury's Listing of Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570) *and have a rating of A- or better with A.M. Best Company.*

Article 6, Construction Documents, Coordination Documents& Record Documents

New *The Owner makes no representations, express or implied, about the adequacy accuracy of the Drawings, Specifications or other Construction Documents provided or their suitability for their intended use. Owner expressly disclaims any implied warranty that the construction Documents are adequate, accurate or suitable for their intended use.*

- 6.2.5 Once determined acceptable, the Contractor shall provide to Owner mylar prints of professionally drafted "As-Constructed" drawings, along with an electronic copy on CD, "As-Constructed" specifications in bound volume(s) along with an electronic copy on CD, two sets of photocopies or prints of the mylar "As-Constructed" drawings, two sets of operating and maintenance manuals, two sets of approved submittals, and other record documents as required elsewhere in the Contract Documents. *All electronic copies shall be provided in a format acceptable to the ODR.*

Article 8. Quality Control

- 8.3.1.2 The Contractor shall indicate the type of item, contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from the A/E and Owner. The submittal register shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates. The Contractor shall show and allow a minimum of thirty (30) calendar days duration after receipt by the A/E and ODR for review and approval. If re-submittal is required, allow a minimum of an additional fifteen (15) calendar days for review. Submit the updated submittal register with each request for progress payment. The Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. *Failure to update and provide the submittal schedule/register as required shall constitute cause for Owner to withhold payment otherwise due.*

Article 9. Construction Schedules

- 9.6.2.1 "A Weather Day" is a day on which the Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent the Contractor from performing seven continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at the Site prevent Work from proceeding, the Contractor shall immediately notify the ODR for confirmation of the conditions. At the end of each

calendar month, the Contractor shall submit to the ODR and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by the ODR, any time extension granted will be issued by Change Order for those weather days during that month which exceed the number expected, as shown in the Rainfall Table located in Special Conditions. If the Contractor and Owner cannot agree on the time extension, the Owner may issue a Unilateral Change Order for a fair and reasonable time extension.

9.7 No Damages for Delay. *The Contractor has no claim for monetary damages for delay or hindrances to the Work from any cause, including without limitation any act or omission of the Owner.*

9.10 Failure to Complete Work Within the Contract Time. **TIME IS OF THE ESSENCE OF THIS CONTRACT.** The Contractor's failure to substantially complete the Work within the Contract Time or to achieve Final Completion as required will cause damage to the Owner. These damages are liquidated by agreement of the Contractor and the Owner, as set forth in Liquidated Damages below.

9.11 Liquidated Damages. *For each consecutive calendar day after the date of Substantial Completion, plus any extensions of time granted by Change Order, that the Work is not substantially completed, Contractor shall pay to Owner, within ten (10) days following written demand, an amount determined by the following schedule:*

<u>From</u>	<u>To</u>	<u>Per Day</u>
\$1,000,000	\$14,999,999.99	\$ 2,500
\$15,000,000	\$29,999,999.99	\$ 5000
\$30,000,000	\$44,999,999.99	\$ 7,500
\$45,000,000	\$59,999,999.99	\$10,000
\$60,000,000	\$69,999,999.99	\$12,500
\$70,000,000	\$79,999,999.99	\$15,000
\$80,000,000	\$89,999,999.99	\$17,500
\$100,000,000 and over		\$20,000

not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages that Owner will sustain for late completion. Owner may also recover the liquidated damages from any money due or that becomes due Contractor. The amount of liquidated damages may be adjusted by Owner in Special Conditions. The parties stipulate and agree that the actual damages sustained by Owner for late completion of the Project will be uncertain and difficult to ascertain, that calculating Owner's actual damages would be impractical, unduly burdensome, and cause unnecessary delay, and that the amount of daily liquidated damages set forth above is a reasonable estimate.

Payment of the liquidated damages does not preclude recovery by Owner of other damages or losses under other provisions of the Contract, except for claims related

to delays in Substantial Completion or Final Completion. Owner's right to receive liquidated damages shall not affect Owner's right to terminate the Contract as provided in these UGSC or elsewhere in the Contract Documents, nor shall termination of the Contract release Contractor from the obligation to pay the liquidated damages.

Article 11. Changes

- 11.1 Change Orders. A Change Order issued after execution of the Contract is a written order to the Contractor, signed by the ODR, the Contractor, and the A/E, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. The ODR may issue written authorization for the Contractor to proceed with work of a Change Order in advance of final execution by all parties. *In the absence of an agreement with the Contractor on a Change Order, the Owner may issue a Unilateral Change Order that will have the full force and effect of a contract modification. The issuance of a Unilateral Change Order does not prejudice the Contractor's rights to make claims or to appeal disputed matters under terms of the Contract.*
- 11.1.1 The Owner, without invalidating the Contract, *and without prior approval of the surety*, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order.
- 11.8.1 For work performed by its forces, the Contractor will be allow edits actual costs for materials, *equipment charges*, the total amount of wages paid for labor, the total cost of Federal Old Age Benefit (Social Security Tax) and of Worker's Compensation and Comprehensive General Liability Insurance, plus Bond cost if the change results in an increase in the Bond premium paid by the Contractor. To the total of the above costs, the Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined. Overhead shall be considered to include insurance other than mentioned above, field and office supervisors and assistants, including safety and scheduling personnel, use of small tools, incidental job burdens and general home office expenses, and no separate allowance will be made therefore. Allowable percentages for overhead and profit on changes will not exceed 15 percent if the total of self-performed work is less than or equal to \$10,000, 10 percent if the total of self-performed work is between \$10,000 and \$20,000 and 7.5 percent if the total of self-performed work is over \$20,000, for any specific change priced.

Article 12. Project Completion and Acceptance

12.1.1.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the open items list, the A/E, ODR, the Contractor and other Owner representatives as determined by the Owner, will jointly attend the Substantial Completion Inspection, which shall be conducted by the ODR or their delegate. If the ODR determines that the Work is Substantially Complete, the ODR will issue a Certificate of Substantial Completion to be signed by the A/E, Owner and Contractor, establishing the date of Substantial Completion, *and identifying responsibilities for security, maintenance, and insurance*. A/E will provide with this certificate a list of punch-list items (the Pre-Final Punch-list) for completion prior to final inspection. This list may include items in addition to those on the Contractor's punch-list, which the inspection team deems necessary to correct or complete prior to Final Inspection. If the Owner occupies the facility upon determination of Substantial Completion, the Contractor shall complete all corrective Work at the convenience of the Owner, without disruption to Owner's use of the facility for its intended purposes.

Article 14. Suspension and Termination

14.3.5 If the Contractor or its Surety fails to remedy the condition(s) to the satisfaction of the Owner within thirty (30) days following receipt of notice, the Owner may *immediately terminate the Contract, make arrangements* for completion of the Work, and deduct the cost of completion from the unpaid Contract Sum.

14.5.3 When the Contract is terminated for the Owner's convenience, the Contractor may recover from the Owner payment for all Work executed *before the notice of termination along with the actual and reasonable cost of any additional work required to secure the Project and property related to the Contract following the notice of termination. The Contractor will not be entitled to recover any other costs or damages arising from the termination for convenience of the Owner including, but not limited to, claims for lost business opportunities.*

14.6 Termination By Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon thirty (30) additional days' written notice to the ODR, terminate the Contract and recover from the Owner payment for all Work executed **before the work stoppage along with the actual and reasonable cost of securing the Project and property related to the Contract during the period of work stoppage. The Contractor will not be entitled to recover any other costs or damages arising from the work stoppage including, but not limited to, claims for lost business opportunities.** If the cause of the work stoppage is removed prior to the end of the thirty (30) day

notice period, the Contractor may not terminate the Contract *but may be entitled to an equitable adjustment in the Contract Sum and Contract Time.*

EXHIBIT E – STATEMENT OF WORK

(SOW” is outlined in the request for Qualifications 717-9-705 Dated November 21, 2008;Section 3, Executive Summary 3.1 thru 3.2)

3.1 Project Description & Scope

Texas Southern University proposes to build affordable low cost but durable, attractive, energy-saving, and environmentally responsible housing to accommodate campus demand for housing beginning in Fall 2014. The project shall consist of a new 800-bed Student Housing Facility to be located at Sampson and Wheeler. The structures shall be built to such a standard that they will last a minimum of 30 years. To insure project security with extensive security measures such as several levels of security protection, central alarm systems, centralized card access entrances, camera monitoring systems and well lit sites and buildings. To comply with the Americans with Disabilities Act (ADA) and Texas State accessibility codes as well as all applicable federal, state and local codes, rules, regulations. In particular the new facilities must have fire sprinklers in each room and in the hallways and public areas. To address sustainability issues including energy efficiency and meeting State Energy Codes, included will be energy conserving features such as individual unit meters. The facility will house freshmen and sophomores with typical room configuration of a double occupancy without a living room. The facility will include beds for resident staff. Public spaces will include communal gathering spaces on each floor and small study rooms. The project will not include a cafeteria, onsite parking, classrooms or a computer center. Building(s) shall be no higher than six (6) stories high. Texas Southern University has a space deficit as varied by the recent Texas Higher Education Coordinating Board review of net assignable square feet.

This Request for Qualifications (RFQ) is seeking Letters of Interest and Qualifications Statements for architectural firms interested in providing services in support of this program hereafter called the Firm. The Firm shall include qualifications and recent similar experience on projects in the greater Houston area. Firm members should have at least 10 years of working knowledge of similar projects. The Firm will be required to bring on board specialists and engineers on an as-needed basis *only* with the written approval of the University.

3.2 Scope of Services

The scope of services covers the requirements of the selected firm to provide professional services. These services will relate to complete project documentation of all building systems for bidding, construction administration and completion using the identified program, site development criteria, site configuration criteria, site environs

evaluation criteria, performance and understanding of utilities and easements, approved Preliminary Design Documentation including criteria for structural, mechanical, electrical and other systems.

Preparation of Construction Documentation drawings by use of approved preliminary Design Phase Documents and such standard documents as may be furnished by the University, detailed and comprehensive plans consisting of, but not limited to, (1) site plans, architectural, structural, mechanical, and electrical floor plans, elevations, cross sections and construction details to fix and illustrate the size and character of the Project; and (2) detailed specifications based on the Preliminary Design Documentation. Such Construction Documents will be prepared in compliance with applicable building codes, ordinances, and other regulatory authorities in effect at the time such documents are prepared.

The Architect will be expected to review with the University the Estimated Project Construction Costs prepared by the Architect from Construction Documents prepared at 50%, and 90% completion and if necessary, will make recommendations to the University regarding cost alternatives and methods as may be reasonably required by the University to comply with the Project Construction Budget. If necessary the Architect will be expected to modify the Construction Documents to assure that Cost including contingency not exceed the latest Adjusted Project Construction Budget by more than 5%.

The Architect will be expected to submit for the University's review and approval check sets of Construction Documents when 50 percent (50%), and 90 percent (90%) complete. The Architect is expected to assist the University with review and evaluation of bids, and recommendations for awarding construction contracts. Following the award of bid the Architect will provide normal and customary administration services.

The project will be generated in REVIT.

EXHIBIT F – STANDARD CONTRACT ADDENDUM

This Contract Addendum (“Addendum”) between Texas Southern University (“University”) and the other party (“Contracting Party”) indicated in the signature block and is incorporated by reference into the attached Agreement between University and Contracting Party. University and Contracting Party may be referred to singularly as a “Party” and collectively as the “Parties.” Notwithstanding anything in the Agreement to the contrary, if there is any conflict or contradiction between the provisions of the Agreement and those in this Addendum, this Addendum will control and Contracting Party waives any claim to the contrary.

ALTERNATIVE DISPUTE RESOLUTION: The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by University and Contracting Party to attempt to resolve any claim for breach of Contract made by Contracting Party, to the extent it is applicable to the agreement and not preempted by other law. Except as otherwise provided by law, nothing herein is a waiver by University or the State of Texas of the right to seek redress in a court of law.

ASSIGNMENT: The parties recognize that this contract is based upon the skill and expertise of the parties and therefore agree that the contract and the obligations thereunder may not be assigned or delegated without the written consent of the other party, except as expressly allowed by this contract.

NON-APPROPRIATIONS: Contracting Party understands that University is a governmental entity, and should the Legislature fail to provide funding for any period during the term of this contract, University shall be excused for all liability for payment. University is required to give Contracting Party written notice within thirty (30) days after learning that the funds will not be available. Upon receiving written notice from University, this contract will automatically terminate.

OFFICIALS NOT TO BENEFIT: No trustee, officer, director, regent, employee, administrator and representative of University shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

FORCE MAJEURE: In the event of Force Majeure, University may terminate this agreement by written notice following such casualty and University shall not be responsible for any damages sustained by Contracting Party. Force Majeure shall mean fire, earthquake, flood, act of God, strikes or other labor disturbances, riots or civil commotion, litigation, terrorism, war or other acts of any foreign nation, power of government or government agency or authority, or any other cause like or unlike any cause above-mentioned which is beyond the control or authority of University.

SUBCONTRACTS: Any subcontracts and outside associates or consultants required by Contracting Party in connection with the services covered by this contract will be limited to such individuals or firms as were specifically identified and agreed to during negotiations. Contracting Party shall ensure that each subcontractor complies with all provisions of the Agreement and this Addendum. Contracting Party shall remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of the products and/or services set forth in the Agreement.

TAX EXEMPTION: University and Contracting Party agree that University will not be required to pay any taxes for which it can demonstrate an exemption.

CONFIDENTIALITY: Subject to the Texas Public Information Act and any similar legal requirements, neither Party shall disclose any confidential information obtained from the other Party without such Party's prior written approval.

PAYMENT TERMS: Payment terms for amounts due from University under the Agreement (including due dates, late fees and interest) are governed by Chapter 2251 of the Texas Government Code.

INDEPENDENT CONTRACTOR: This Agreement is not intended by the parties to constitute or create a joint venture, pooling arrangement, partnership, or formal business organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth herein. The relationship of the Contracting Party to University is and shall continue to be that of an independent contractor, and no liability or benefits, such as workers' compensation, pension rights or liabilities, insurance rights or liabilities, arising out of or related to an employer/employee relationship, shall arise, or accrue to either party or either party's agent, subcontractor or employee, as a result of this Contract or its performance. No relationship, other than that of independent contractor, shall be implied between the parties or between either party and the other party's agent, employee, or subcontractor.

AUDIT; INDEPENDENT AUDITS; RIGHT TO AUDIT; RETENTION; SUPPORTING DOCUMENTS: The Contracting Party agrees and authorizes University and/or the State Auditor (collectively, "Auditor") to conduct audits or investigations in connection with this Agreement as indicated in Article 8 of the Agreement. Contracting party agrees to cooperate with Auditors conducting such audits or investigations and to provide all information and documents reasonably requested. Contracting Party will include this provision in all contracts with permitted subcontractors.

LIMITATIONS: The Parties are aware that there are constitutional and statutory limitations on the authority of University (a state agency) to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on University's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on University except to the extent authorized by the laws and Constitution of the State of Texas.

SOVEREIGN IMMUNITY: Except as otherwise provided by Texas law, neither the execution of the Agreement by University nor any other conduct, action or inaction of any University representative relating to the Agreement is a waiver of sovereign immunity by University or the State of Texas.

REPRESENTATIONS BY CONTRACTING PARTY: If Contracting Party is a business entity, Contracting Party warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Contracting Party.

ELIGIBILITY TO RECEIVE PAYMENT: Pursuant to Texas Family Code Section 231.006, Texas Government Code Sections 2155.004 and 2155.006, Contracting Party certifies that it is not ineligible to receive

the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this representation and warranty is inaccurate.

PAYMENT OF DEBT/DELINQUENCY TO STATE: Contracting Party certifies that it is not indebted to the State of Texas and is current on all taxes owed to the State of Texas. Contracting Party agrees that any payments owing to Contracting Party under the Agreement may be applied directly toward any debt or delinquency that Contracting Party owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full. (Texas Government Code, Sections 2107.008 and 2252.903).

PRODUCTS AND MATERIALS PRODUCED IN TEXAS: If Contracting Party will provide services under the Agreement, Contracting Party covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

NON-DISCRIMINATION: Contracting Party shall comply with Federal and State of Texas civil rights laws and University policies prohibiting discrimination and harassment. Contracting Party shall not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, gender, national origin, age, sexual orientation, veteran status, or disability that is unrelated to the individual's ability to perform the duties of a particular position. A breach of this covenant may be regarded as a material breach of the Agreement.

TRAVEL EXPENSES: If the Agreement requires University to reimburse for travel expenses, the Contracting party shall invoice all requests for reimbursement in accordance with the State of Texas travel, meal and lodging reimbursement guidelines applicable to State of Texas employees.

RISK OF LOSS: All work performed by Contracting Party pursuant to the Agreement will be at Contracting Party's exclusive risk until final and complete acceptance of the work by University. In the case of any loss or damage to the work prior to University's acceptance, such loss or damage will be Contracting Party's responsibility.

PUBLICITY: Contracting Party shall not use University's name, logo or likeness in any press release, marketing materials or other public announcement without receiving University's prior written approval.

AUTHORITY: The person signing below on behalf of University and Contracting Party warrants that he/she has the authority to execute this contract according to its terms.