

Construction Contract and the Project Management Contract. Architect and the Consultants shall have access to the Site and the Work at all times during the Construction Administration Phase. During the Construction Administration Phase, Architect shall assist the Owner's representative to provide the Services required of the "Architect/Engineer" or the "AE" under the UGC and SGC, as well as the following listed Services (collectively, the "*Construction Administration Phase Services*"):

- 2.8.1 Attend pre-construction conference along with all applicable sub-consultants.
- 2.8.2 In conjunction with Owner's representative, and in coordination with Owner's other consultants and/or representatives, during the construction of the Project, advise and consult with Owner for all purposes including, but not limited to, instructions from Owner to Contractor and communications from Contractor to Owner; provided, however, Owner may, at its discretion, communicate directly with Construction Manager (if any) Architect's authority to act on behalf of Owner shall be to the extent provided in the Construction Documents and may not be restricted, modified, or extended without Owner's written instruction to such effect, which Owner may issue at Owner's sole discretion.
- 2.8.3 In coordination with the Project Manager, review initial administrative submittals for Project schedule, submittal schedule, and equipment matrix to establish the appropriate basis for construction observation. Architect shall review the periodic updates of all schedules submitted or provided by Contractor and advise Owner, Project Manager and Contractor of any deviation from the scheduled progress.
- 2.8.4 Coordinate with Contractor Project Manager and Owner to generally observe progress of construction and ensure that Architect Professional Services are provided in a timely manner to support the Owner's project requirements and the construction schedule.
- 2.8.5 Together with any necessary or appropriate Consultant(s), and in coordination with the Project Manager and Owner, visit the Site and the Work at intervals appropriate to the stage of construction to determine if the Work is proceeding in general accordance with the Construction Documents and to endeavor to guard Owner against defects and deficiencies in the Work. Architect shall issue to Project Manager, with a copy to the Contractor and Owner, a field report noting its observations within three (3) days of each visit.
  - 2.8.5.1 Architect and appropriate sub-consultants shall attend and participate in inspections during the construction phase, and through the Final Inspection (as defined in the UGC and SGC). Architect shall prepare punch lists after Construction Manager prepares a pre-punch list and will perform follow-up observations on the punch lists as may be required, and shall prepare a statement of Final Acceptance of the Work addressed to Owner with a copy each to the Project Manager and Contractor.
  - 2.8.5.2 Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs

in connection with the Work. These shall remain the Contractor's sole responsibility. Architect shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Construction Documents, except that it shall be Architect's responsibility to make known to Owner any such failure to perform which the Architect discovers while performing its construction phase services. Written notice of such failure shall be delivered to Owner within two (2) days from time of discovery.

- 2.8.6 In addition to the Site visits required pursuant to Section 2.8.5 above, coordinate with the Project Manager to visit the Site for specific purposes related to certification of progress payments, mock-up reviews for significant scopes of Work and any formal reviews of the Work.
- 2.8.7 Coordinate with the Owner and Project Manager to determine the amount owing to Contractor and certify the Contractor's payment requests in such amounts. The certification of the Construction Payment Requests shall constitute Architect's representation to Owner and Project Manager, based on Architect's observations at the Site and on the data comprising the Request, that the Work has progressed to the point indicated, that to the best of Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Construction Documents, and that Contractor is entitled to payment in the amount certified.
- 2.8.8 Provide technical advice, clarify and interpret the Construction Documents and make all revisions and changes to the Construction Documents as necessary to accomplish their intent or, with Owner's prior written consent, to correct errors, conflicts, or omissions, advise Owner and Project Manager of all decisions regarding errors or conflicts in, or omissions from, the Construction Documents prior to rendering corrections to Contractor, judge Contractor's performance under the Construction Documents, and render written recommendations within a reasonable time of (10) business days or less as directed by Owner on all claims, disputes and other matters in question between Owner and Contractor relating to execution or progress of the Work or the interpretation of the Construction Documents. Architect shall issue the modifications or revisions to the Construction Documents authorized by this Section 2.8.8 in writing in the form of Architect's supplemental instructions, clarifications, or such other document best suited to accomplish such modifications or revisions.
  - 2.8.8.1 Architect shall review and respond to requests for information about the Construction Documents. The Construction Documents shall contain clear instructions for submission of requests for information, including (by way of example and not of limitation) that each must specify the specific Construction Document that requires clarification and the nature of the clarification required. Request for information will be processed in electronic and hard copy form. Architect shall respond to requests for

information completely and in accordance with Section 2.8.12, which response may require supplemental Construction Documents.

2.8.8.2 Subject to Owner's written approval, Architect's decisions in matters relating to aesthetic effect shall be final if consistent with and reasonably inferable from the intent of the Construction Documents.

2.8.8.3 If directed by Owner, Architect in coordination with the Project Manager shall review and evaluate cost saving proposals submitted by Contractor, subcontractors, suppliers and/or manufacturers and shall make any necessary revisions to the Construction Documents in accordance with Section 2.8.8.4.

2.8.8.4 All proposed changes to Construction Documents, regardless of how initiated, shall be completely identified and defined in the document depicting them as to scope of Work added, removed, or changed. Architect may mark the original copies of the Construction Documents to show such changes, provided that all such revisions shall be permanently recorded on the Record Drawings. 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.

2.8.9 In coordination with the Project Manager and following written notice to Owner, reject Work that, in Architect's judgment, does not conform to the Construction Documents ("*Nonconforming Work*").

2.8.10 In coordination with the Project Manager require additional inspection or testing of all or any portion of the Work, whether or not such Work is fabricated, installed or completed, if Architect considers it necessary or advisable to ensure that the Work is consistent with the letter and/or intent of the Construction Documents. Neither Architect's authority under this Section 2.8.10, nor Architect's good faith decision either to exercise or not to exercise such authority shall give rise to a duty or responsibility of Architect to Contractor or its subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work, nor shall it excuse Contractor or its subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work from its or their obligations with respect to the Work.

2.8.11 The Architect and appropriate sub-consultants are to review for compliance with the Construction Documents, and take any appropriate action with respect to, all Contractor submissions required by the Contract Documents (including, but not limited to, schedules, shop drawings, laboratory reports, samples, fabrication,

erection, and setting drawings, wiring and control diagrams, list of materials and equipment, and other descriptive data pertaining to materials or equipment). This review shall not go to construction means and methods, the contractor's scheduling or sequencing of construction, or to safety issues involved in the construction of the work, as those matters are all the exclusive responsibility of the Contractor. Submittals will be processed in electronic or hard copy format depending on the type of submittal. Architect shall complete such review so as not to delay unreasonably the progress of the Project, and in any event in compliance with Section 2.8.12. The Architect will be responsible for comments from the Architect team members and the owner. The Architect is to incorporate comments from the Architect, Sub-consultant and the owner into the submittal and provide one reviewed stamped hard copy and the electronic copy of all original submittals to the Owner's Representative, during the same transmittal period as the processed submittals are returned to the Contractor. Prior to returning the submittals to the contractor, any requests for substitutes must be approved by the owner prior to review and approval of shop drawings. The Project Manager's role in this submittal process is to monitor the flow of the submittals and assist the Owner in ensuring that the submittals are processed by the appropriate team members in a timely manner.

- 2.8.12 Act with reasonable promptness, but in any event within ten (10) business days after receipt, on submittals and requests for information so as to cause no delay to Contractor's scheduled progress. Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Architect's review and approval shall not constitute approval of any construction means or methods.
- 2.8.13 Review and advise Owner and Project Manager in writing as to the acceptability of substitutions proposed by Contractor.
- 2.8.14 As requested by the Owner, the Project Manager shall receive Change Proposal Request (CPR) from the Contractor where applicable to Scope of Work and coordinate review with Architect and Consultants for justified consideration by the Owner to include Scope of Work Clarifications and/or modifications for issuing to the Contractor for use in preparing Change Order Proposals for Owner's approval and execution in accordance with the Construction Documents. The Project Manager shall coordinate with the Architect to review the Contractor's Change Order Proposals to confirm that the scope addressed in the Contractor's Change Order Proposals is consistent with the Construction Documents and Requests for Proposals.
- 2.8.15 Coordinate with the Project Manager to review the written guarantees and warranties, operating and maintenance instructions, manuals brochures, diagrams, and other Project close-out documentation provided by Contractor as required in the UGC and specifications.
- 2.8.16 Not Used

2.8.17 Within ninety (90) days after Substantial Completion, deliver to Owner the Record Drawings as required by Section 10.1 below.

**2.9 Hygrothermal Modeling.** Architect shall utilize WUFI-ORNL/IBP hygrothermal modeling software tool jointly developed by Oak Ridge National Laboratory (USA) and the Fraunhofer Institute in Bauphysics (Germany) to assess the response of building envelope systems in terms of heat and moisture loads and provide a method for evaluating and optimizing the building envelope design.

2.9.1 Model Development Scope shall include the following:

- (a) Develop WUFI hygrothermal models of four (4) furnished by the Project Architect.
- (b) Input the construction of the four (4) exterior wall section assemblies into the program.
- (c) Specify the time period of the calculation.
- (d) Specify the interior and exterior conditions.
- (e) Run the simulation to calculate the time evolution of the temperature and moisture fields in the building components of the four (4) wall sections.

2.9.2 Systems Analysis Scope: Utilize the WUFI models to assess the danger of interstitial condensation within the proposed exterior wall assemblies which could damage interior and exterior building components. If the condensation potential in any of the proposed wall assemblies is indicated by the WUFI models to be high, utilize the model to run an analysis of alternate wall systems in order to mitigate the risk.

2.9.3 Report Preparation Scope:

- (a) At the conclusion of the analysis phase, present the results of the computer hygrothermal analysis modeling in the form of a written report documenting the findings and recommendations.
- (b) The results of the simulation will be presented in the following three (3) forms:

Courses: Describe the temporal evolution of certain quantities such as the moisture content in the building component or the heat fluxes through the surfaces.

Profiles (Graphs): Show the distribution of certain quantities across the building component at a specified point in time, such as the temperature or the moisture distribution.

Film File: Contains all the profiles of temperature, relative humidity and water content that have been computed during the simulation. These profiles can be displayed in rapid succession with the film viewer. Viewing this animated sequence of profiles as a 'movie' provides a dynamic impression and better understanding of the thermal and hygric transport processes in the component.

2.9.4 Presentation Scope: Meet with the Owner to present the study findings and recommendations. Respond to any follow-up questions and comments.

## ARTICLE 3 – ADDITIONAL SERVICES

- 3.1 GENERAL.** If authorized in writing by Owner, Architect shall provide any or all of the Services listed in Section 3.2 (the “*Additional Services*”) in accordance with this Section 3.1. Prior to commencing any Additional Service, Architect shall submit to Owner an Additional Services Proposal in Owner’s then-standard form. The Additional Services Proposal shall describe in detail (a) the nature and scope of the Additional Services, (b) the basis upon which Architect believes such services constitute Additional Services rather than Basic Services, (c) the maximum amount of fees (listing of professions performing work, their hourly rate, and number of hours proposed to complete work) (d) a proposed schedule for performance of the Additional Service. Upon acceptance by Owner, each Additional Services Proposal shall become part of this Agreement and shall be subject to all 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, except that payment for any such accepted Additional Service shall be in accordance with Section 6.2.
- 3.2 ADDITIONAL SERVICES.** Except to the extent required as part of Basic Services, the following services, if requested by Owner’s Designated Representative in writing, are Additional Services:
- 3.2.1 Not Used
  - 3.2.2 Provide financial feasibility or other special studies other than as they relate to energy conservation and guaranteed savings, or the cost of the Project.
  - 3.2.3 Provide planning surveys, Site evaluations, environmental studies or comparative studies of prospective sites for the Project.
  - 3.2.4 Provide services related to future facilities, systems and equipment, including but not limited to, information technology, which are not intended to be incorporated during the Construction Administration Phase.
  - 3.2.5 Make detailed investigation of existing conditions or facilities or to make measured drawings thereof, other than to verify the accuracy of drawings or other information furnished by Owner.
  - 3.2.6 Coordinate Work performed by Owner’s separate contractors or by Owner’s own forces.
  - 3.2.7 Not Used
  - 3.2.8 Revise all or any of the Construction Documents when such revisions are inconsistent with written approvals or instructions previously given by Owner or due to changes approved by Owner and not due to errors or omissions of Architect.

- 3.2.9 Revise drawings, specifications or other documents because of enactment or revision of Applicable Laws subsequent to the preparation of such drawings, specifications or other documents.
- 3.2.10 Investigate, survey, value, inventory or make detailed appraisal of existing facilities, except as necessary or appropriate for the performance of Basic Services.
- 3.2.11 In the event of fire or other casualty damages all or any portion of the Work during construction, consult with Owner concerning replacement of such damaged Work, and furnish services as may be required in connection with the replacement of such Work.
- 3.2.12 Provide Services to Owner after Final Payment or expiration of the Warranty (as defined in the UGC or SGC), whichever is later.
- 3.2.13 Appear as an expert witness on behalf of Owner in connection with any public hearing, arbitration proceeding or legal proceeding. In this context, Architect's reasonable preparation for such appearance shall also be billed as part of the Additional Service.
- 3.2.14 Design the project to LEED standards
- 3.2.14.1 Submit the project to the U.S. Green Building Council.
- 3.2.14.2 Provide Energy Model except as required by SECO.
- 3.2.15 Provide commissioning services conforming with U.S. Green Building Council criteria.
- 3.2.16 Design of Environmental Graphics, Signage and Wayfinding beyond the use of Texas Southern University's signage standards.
- 3.2.17 Retain reputable, qualified expert consultants for any of the following:
- Feasibility Studies
  - Traffic Studies and Traffic Control Planning
  - Commercial Kitchen Design
  - Laboratory Equipment Planning Services
  - Lighting Design
  - Preliminary and / or Final Subdivision Plat
  - Surveying
  - Sub-surface surveying
  - Low impact development, including bio-swales, except as may be required to satisfy SECO requirement
  - Easements associated with utilities, license agreements
- 3.2.18 Furniture, Fixtures and Equipment Design Services except as is required by Article 2.2.8.

When retained by Architect, each such expert shall be a Consultant for all purposes under this Agreement. In the event that the Architect is qualified to provide any of the services listed in this section, it may propose to do so, subject to acceptance by the Owner in writing. In such event, Architect shall provide such services at a cost

competitive with that obtainable from consultants, and shall provide such information as Owner may request to verify such information.

## **ARTICLE 4 – STAFFING AND AUTHORITY**

- 4.1 ARCHITECT’S STAFF.** Architect shall submit, for Owner’s approval, a team or staffing proposal for the Project, complete with job description, names and previous experience of all design personnel. Architect’s senior principal responsible for managing the Project (the “*Principal*”) and Architect’s project manager for the Project (the “*Project Manager*”) are identified in Exhibit A. Architect shall not replace the Principal, the Project Manager or (after Services have commenced) any design personnel without Owner’s prior written approval. Owner reserves the right to authorize replacement of Architect’s sub-consultant should Owner deem their performance unsatisfactory. So long as his or her performance remains acceptable to Owner, the Project Manager will lead Architect’s day-to-day Project team from the beginning of design through the completion of construction, will remain in charge of architectural services, will act on behalf of, and bind, Architect with respect to all stages and phases of the Services, and will be available as required for the benefit of the Project and Owner.
- 4.2 ARCHITECT’S AUTHORITY.** Architect shall have the authority to act on behalf of Owner only to the extent provided in this Agreement, as it may hereafter be amended, modified or revised in a writing signed by Owner and Architect. Under no circumstances shall Architect contract, negotiate or make commitments with any third party (including any governmental authorities) with respect to the Project without the prior written consent of Owner. Architect shall not order corrective Work without Owner’s prior written approval.
- 4.3 CONSULTANTS.** Architect shall bind each and every Consultant to the terms of this Agreement and shall ensure that all persons rendering Services under this Agreement are properly licensed and/or registered as required to provide such Services under Applicable Law. Architect shall provide to Owner promptly after execution a copy of each executed agreement with its Consultants. Conformed copies of executed Consultant subcontracts shall be provided to Owner. Nothing in the foregoing shall create a contractual relation between Owner and any Consultants.
- 4.3.1** Engineer Consultants must be licensed and registered in the State of Texas to practice in the field for which they are retained by Architect, and must sign and stamp their reports regarding the Work and the Project, including conditions at the Site.

## **ARTICLE 5 – OWNER’S RESPONSIBILITIES**



- 5.1 **GENERAL.** Through the Office of Facilities Planning and Management, Owner will establish and identify the individual authorized to act in Owner’s behalf with respect to the Project (the “*Owner’s Designated Representative*”). Architect acknowledges that Owner may designate a Construction Manager as Owner’s Designated Representative. Owner, acting through Owner’s Designated Representative or otherwise, shall:
  - 5.1.1 Promptly examine documents submitted by Architect and render decisions pertaining thereto to avoid unreasonable delay in the progress of the Project and of the Services. Owner’s approval must be in writing and no approval may be deemed given in the absence of written approval. Owner may require Architect to halt production during design review.
  - 5.1.2 Be available for Site visits and attend meetings scheduled by Architect at mutually agreeable times.
  - 5.1.3 Notify Architect in writing of any design fault or defect in the Project or conflict in the Construction Documents of which Owner becomes aware or receives notice. Nothing in this provision, or elsewhere in this Agreement, shall be deemed to impose upon Owner the obligation to inspect or review the Work, Services or Construction Documents for design faults or defects.
  - 5.1.4 Promptly notify Architect of any direct communications that may affect the Services.
  - 5.1.5 Provide necessary forms of contracts, bonds, General Conditions of the Construction Contract, and advertisement for bids.
  - 5.1.6 Provide to Architect a copy of the executed Construction Contract, including all exhibits.
  - 5.1.7 Notify Architect in writing of any deficiencies in materials or workmanship discovered in the Work during Contractor’s warranty period.
  - 5.1.8 Make payments in accordance with ARTICLE 7 below. Notwithstanding anything to the contrary contained herein, Owner’s compliance with the provisions of this Section 5.1 shall in no way relieve Architect from any duty or responsibility under the terms of this Agreement or waive any rights, claims or remedies of Owner.
  - 5.1.9 Take reasonable steps to ensure that documents submitted to the Architect are accurate and complete.
- 5.2 **FACILITY PROGRAM.** Architect shall provide a Detailed Facility Program in accordance with Section 2.4.
- 5.3 **BUDGET; SCHEDULE.** Owner has provided to Architect the preliminary Construction Cost Limitation, which includes contingencies for bidding and changes in the Work during construction. Owner’s preliminary project schedule, attached hereto as Exhibit B, sets forth Owner’s plan for milestone dates and completion of the Project.
- 5.4 **SITE CONDITIONS.** Owner shall furnish to Architect:
  - 5.4.1 A land survey of the Site, signed and dated by a Texas Registered Professional Land Surveyor, identifying the physical characteristics, legal limitations and utility locations. The survey and legal information shall include as applicable, grades and

lines of streets, alleys, pavements and adjoining property, rights-of-way, restrictions, easements, encroachments, deed restrictions, boundaries and topography of the Site, location, dimensions and floor elevations of existing buildings, other improvements and trees, and full information concerning available service and utility lines, both public and private, above and below grade, including invert and depths.

- 5.4.2 The report and/or services of a geotechnical engineer, when such report is, or services are, deemed necessary due to the scope of the Project. Geotechnical services may include test borings, test pits, soil bearing values and other necessary operations for determining subsoil conditions, with written reports and appropriate recommendations.
- 5.4.3 All necessary structural, mechanical, chemical and other laboratory tests and all construction materials testing, inspections and reports as required by Applicable Law or the Construction Documents or reasonably requested by Architect.
- 5.4.4 Testing and balancing services for mechanical and hydronic systems. The services, information, surveys and reports required by this Section 5.4 shall be furnished at Owner's expense.

**5.5 CONSTRUCTION INSPECTOR.** Owner may, at Owner's option, retain one or more construction inspectors for close, on-Site examination of the materials, structure and equipment, and surveillance of the workmanship and methods used, to ensure that the Project is reasonably accomplished in accordance with the Construction Documents and good construction practices. Owner's assignment of a construction inspector to the Site or the Project shall not relieve Architect of any obligation nor affect Owner's rights and remedies under this Agreement, and Architect shall cooperate with any such inspector.

## **ARTICLE 6 – COMPENSATION**

**6.1 BASIC SERVICES.** Owner shall compensate Architect for Basic Services the fixed-price amount of **Two Million, Four Hundred Eighty Seven Thousand, Five Hundred Forty Dollars and Zero Cents (\$2,487,540.00)**, payable in accordance with Section 7.1 below.

6.1.1 Architect recognizes that Basic Services normally entails reasonable changes in the Construction Documents commensurate with the size and complexity of this Project, and that reasonable changes to the Construction Documents (or any of them) are likely to occur during the course of the Project. Architect therefore represents that the amount set forth in Section 6.1 contemplates and includes such changes during the course of both design and construction, and that such changes shall entitle Architect to no additional compensation.

6.1.2 Upon receipt of Owner's notice that Architect's design, with alternates, is not within the Construction Cost Limitation, Architect will, as part of Basic Services,

revise the design to bring it within the Construction Cost Limitation to Owner's satisfaction.

**6.2 ADDITIONAL SERVICES.** For Additional Services performed by Architect only, the Owner shall compensate the Architect by an hourly rate set forth in Exhibit A or multiplied by a factor of 1.1 (110%) for Additional Services performed by a Consultant or other third party retained by Architect pursuant to ARTICLE 3, or agreed to by the parties prior to Architect's performance of such Additional Services.

6.2.1 At Owner's request, Architect shall deliver to Owner a proposal in a form acceptable to Owner for performance of any proposed Additional Services on a fixed-price basis.

**6.3 REIMBURSABLE EXPENSES.** Subject to the Reimbursable Expenses Cap and Principal Architect only, Architect shall be reimbursed for the actual and commercially reasonable out-of-pocket invoiced expenditures for any of the expenses listed in Section 6.3.1 through 6.3.8 (the "*Reimbursable Expenses*") made by Architect, its employees, or its Consultants in the interest of the Project, excluding any applicable taxes. In order to receive reimbursement for Reimbursable Expenses, Architect must submit to Owner's Designated Representative a request for payment on Owner's then-current form, together with original invoices and, with respect to any Reimbursable Expenses incurred in accordance with Sections 6.3.2, 6.3.3, 6.3.4, 6.3.7, and/or 6.3.8, Owner's prior written approval.

6.3.1 Commercially reasonable out-of-pocket expense of reproductions (other than those required as Basic Services, billed as Additional Services, provided by Owner, or for Architect's and its Consultants' office use); provided, however, all invoices for reproductions the obligation of Owner under this Section, must be billed directly to Owner, free of state sales taxes, and identified by Architect as to the project name, number and institution.

6.3.2 If authorized in writing in advance by Owner through a Design Change Authorization, the expense of renderings, mock-ups or models for Owner's use.

6.3.3 Fees paid for securing approval of Appropriate Authorities.

6.3.4 Registration and documentation of and for LEED certification in accordance with Section 3.2.14 above, including fees paid to Appropriate Authorities.

6.3.5 Professional models and renderings produced for presentations when requested in writing by Owner.

6.3.6 Postage or delivery charges of a reputable courier service reasonably acceptable to Owner for distribution of drawings and specifications and other items in connection with the Project except for: correspondence between Architect and Owner; Architect's in-house work or correspondence; or work or correspondence exchanged between Architect and any Consultants.

6.3.7 Expense of any additional insurance coverage or limits that exceed those required by this Agreement, when requested by Owner.

6.3.8 Transportation and living expenses when traveling in connection with the Project, at Owner's prior written request and approval, excluding travel or living expenses

within the Houston Metropolitan area. Transportation expenses must satisfy the following requirements:

**6.3.8.1 Travel from Texas to out of state locations:**

6.3.8.1.1 Maximum rates for lodging and meals shall be in accordance with the "Out of State Meals and Lodging Rates," plus city and state taxes, published by the Texas Comptroller of Public Accounts (<http://www.gsa.gov/portal/category/21287>)

6.3.8.1.2 Notwithstanding the limitation on lodging rates above, if the expenses actually incurred by Architect for lodging exceed the State rate, Architect may be reimbursed for the additional amount incurred up to a maximum of forty percent (40%) of the State rate.

6.3.8.1.3 The meal per diem will only be paid on trips involving overnight travel.

**6.3.8.2 Travel to Texas from out of state locations:**

6.3.8.2.1 Lodging: maximum reimbursement for lodging in Texas shall be limited to current State of Texas per diem rate plus city and state taxes.

6.3.8.2.2 Notwithstanding the limitation on lodging rates above, if the expenses actually incurred by the Service Provider for lodging exceed the State rate, the Service Provider may be reimbursed for the additional amount incurred up to a maximum of forty percent (40%) of the State rate.

6.3.8.2.3 Meals; reimbursement limited to current State of Texas per diem rate. The meal per diem will only be paid on trips involving overnight travel.

**6.3.8.3 Automobile Expenses:** auto rental for compact size category, related auto insurance, gasoline, parking and taxi service. Costs include applicable taxes.

**6.3.8.4 Airline Travel:** coach class air travel with rates nearest to the State contract rate. All airline travel shall be booked no less than 7 days in advance when possible. Reimbursement for air travel booked within 7 days of departure, without the prior approval of Owner's Designated Representative, may be limited. A sales receipt and a boarding pass must be provided for each flight in order to qualify for reimbursement.

**6.3.9 Not Reimbursable Expenses.** Any expense not specifically enumerated above as eligible for reimbursement shall not be reimbursed by Owner. Expenses not allowed for reimbursement include the cost of review documents required to be provided to Owner, telephone charges, FAX service, alcoholic beverages, laundry, valet service, entertainment or any non-Project related items. All tips must be included within the per diem allowances.

## ARTICLE 7 – PAYMENTS

7.1 **BASIC SERVICES.** Payments for Basic Services shall be made monthly in proportion to services performed to increase the compensation for Basic Services to the following percentages of the Basic Fee at the completion of each phase of the Work:

- Schematic Design Phase 15%
- Design Development Phase 35%
- Construction Documents Phase 75%
- Bidding or Negotiation Phase 80%
- Construction Administration Phase 95%
- Final Completion of Construction and  
Owner's Receipt of Record Drawings  
and Final Lien Waiver 100%

Notwithstanding the foregoing, payments in accordance with this Section 7.1 shall not exceed ninety percent (90%) of the Service performed until Owner has approved and accepted the Services for that phase, which approval shall not be unreasonably withheld.

7.1.1 Architect shall submit to Owner monthly Architect's invoice in the form specified by Owner from time to time, itemizing the Services performed and billed for the current payment period including payments to Consultants, which items must be supported with (1) a copy of each Consultant's invoice, (2) each Consultant's contingent lien waiver for the Service(s) billed, and (3) each Consultant's final lien waiver for all Services rendered prior to the then-current invoice. Each invoice (except the first) will be delivered to Owner with Architect's certification that Architect paid within five (5) days of receipt of Owner's payment all Consultants and other third parties whose invoices were itemized on the immediately preceding Architect's invoice.

7.1.2 Final payment for Services shall not be due and payable unless and until Architect has delivered to Owner (1) the Record Drawings, (2) Architect's and each Consultant's final lien waiver for all Services rendered (the "***Final Lien Waiver***"), and (3) Architect's Statement of Services containing the following certification: "*Architect certifies that all persons, consultants and firms who supplied services to it in connection with this Project have been fully paid for their Services, or that they will be fully paid immediately upon receipt of this payment, and that there are no other outstanding debts, obligations or claims related to this Project for which Owner may be liable or for which Architect will look to Owner for additional payment. This payment constitutes full and final payment to Architect and its consultants for all Services provided for this Project and Owner is not obligated to make any more payments under its agreement with Architect.*"

7.2 **ADDITIONAL SERVICES and REIMBURSABLE EXPENSES.** Payments for Additional Services and for Reimbursable Expenses shall be made monthly upon

presentation of Architect's invoice and original back up documentation as required pursuant to ARTICLE 6.

### **7.3 GENERAL.**

- 7.3.1 No partial payment made shall be, or construed to be, final acceptance or approval of the Services to which the partial payment relates, or a release of Architect or any of Architect's obligations or liabilities with respect to such Services.
- 7.3.2 Under no circumstances shall Owner be obligated to make any payment (whether a progress payment or final payment) to Architect during the existence of any one or more of the following conditions:
  - 7.3.2.1 Architect is in breach of or default under this Agreement.
  - 7.3.2.2 Any portion of a payment is for Services that were not performed in accordance with this Agreement; provided, however, payment shall be made for those Services which were performed in accordance with this Agreement;
  - 7.3.2.3 Architect has failed to make payments promptly to Consultants or other third parties for or in connection with Services for which Owner has made payment to Architect;
  - 7.3.2.4 If Owner, in its good faith judgment, determines that the balance of the unpaid balance of the sum for Basic Services (set forth in Section 6.1) is not sufficient to complete the Basic Services in accordance with this Agreement; or
  - 7.3.2.5 Architect has failed to achieve a level of performance necessary to maintain the Schedule.
- 7.3.3 Any fee, penalty, interest or damages suffered or incurred by Owner due to Architect's failure or refusal to pay any Consultant or other third party shall be offset against payment(s) due Architect.
- 7.3.4 If the Project is suspended or abandoned in whole or in part, Architect shall be paid for Services performed and for Reimbursable Expenses due prior to Architect's receipt of Owner's written notice of such suspension or abandonment.
- 7.3.5 The acceptance by Architect 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 of Architect against Owner under the provisions of this Agreement except those claims previously made in writing and identified by Architect as unsettled at the time of the final request for payment.
- 7.3.6 For purposes of *Texas Government Code* §2251.021, the date the performance of a Service is completed is the date that Owner's representative approves the invoice.

## ARTICLE 8 – RECORD RETENTION; OWNER AUDIT RIGHTS

**8.1 RECORDS.** Architect shall keep full and detailed records and accounts of all information related to this Agreement and the Services in accordance with Generally Accepted Accounting Principles (GAAP) and exercise such cost controls as may be necessary for proper financial management under this Agreement. Owner and its representatives (including but not limited to third-party auditing consultants, if any) will be afforded reasonable access, at reasonable times, to all records (collectively, “*Audit Records*”) establishing the actual cost of the Additional Services and Reimbursable Expenses, whether or not Owner and Architect have agreed to a fixed price and/or lump sum for Basic Services, including but not limited to: Architect’s accounting records, time sheets, Direct Salary Expense, insurance rates and the support therefore, insurance contracts, insurance policies, invoices, bills, Reimbursable Expenses reports, Additional Services reports, records, books, correspondence, instructions, Record Drawings, receipts, Consultant contracts, memoranda, written policies and procedures, original estimates, estimating work sheets correspondence, any other supporting evidence necessary to substantiate charges related to this Agreement and other records, drawings or data relating to the Reimbursable Expenses or Additional Services performed in accordance with this Agreement. Architect shall preserve Audit Records for a period of four (4) years after final payment, termination of this Agreement, or abandonment of the Project for such longer period as may be required by law.

8.1.1 Architect shall provide Owner with an executed copy of its contract with each Consultant, including any retained by Architect as Additional Services. Architect shall require all Consultants to permit Owner to audit their books and records relating to the Project for the purpose of determining compliance with the provisions of this Agreement regarding qualifications, invoicing and conformance with the Construction Documents. Architect shall not contract with a Consultant for this project who objects to this article.

**8.2 AUDIT.** The Audit Records (hard copy, as well as computer readable data if it can be made available) will be opened to inspection and subject to audit and/or reproduction by Owner’s agent or its authorized representative to the extent Owner deems necessary. Such audits may require inspection and copying from time to time and at reasonable times and places of any and all such information, materials and data as set forth above of every kind and character. Such records subject to audit will also include those records necessary to evaluate and verify direct costs (including overhead allocations) as they may apply to costs associated with the Additional Services of this Agreement.

8.2.1 Owner’s agent or its authorized representative will have reasonable access at reasonable times to the Audit Records, and will be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement, may contact subcontractors or other vendors related to the Project, and will have access to the Audit Records.

8.2.2 Not Used

8.2.3 If any audit discloses overcharges by Architect to Owner that are (i) proven in the reasonable discretion of Owner and (ii) in excess of 10 percent (10%) of the total cost of the Additional Services or Reimbursable Expenses (as the case may be), then the reasonable actual cost of Owner's audit will be reimbursed to Owner by Architect within thirty (30) days after receiving Owner's written notice. Any adjustments and/or records due to the overcharges will be made within a reasonable amount of time (not to exceed thirty (30) days) from presentation of Owner's findings Architect. Owner may deduct such reimbursement amounts from any money due or that becomes due Architect.

## ARTICLE 9 – TERMINATION OF AGREEMENT

9.1 **TERMINATION.** Owner reserves and has the right and privilege of canceling, suspending, or abandoning this Agreement or the execution of all or any Service in connection with this Agreement at any time upon seven (7) days' written notice to Architect ("*Owner Termination*"). Architect may terminate this Agreement upon seven (7) days' written notice to Owner's Designated Representative, should Owner materially breach any of its obligations, including Owner's obligations under ARTICLE 5 if Owner has failed to cure such material breach within fifteen (15) days following Architect's written notice to Owner of such material breach.

9.2 **TERMINATION PAYMENT.** In the event of Owner Termination for any reason other than Architect's default under this Agreement or termination by Architect, Owner shall pay the Termination Payment to Architect and thereafter Owner shall have no further obligation to Architect. "*Termination Payment*" means full payment for all Services performed as required by this Agreement and for all Reimbursable Expenses incurred by Architect prior to the date of Architect's receipt of Owner's notice of termination. In ascertaining what Services are payable as part of the Termination Payment, consideration shall be given to both completed Services and Services in progress, to complete and incomplete drawings, and to other documents, whether delivered to Owner or in the possession of Architect.

9.2.1 Notwithstanding anything to the contrary contained in this ARTICLE 9 or elsewhere in this Agreement, Architect shall not be entitled to receive Termination Payment unless and until Architect has delivered to Owner all drawings, specifications, statements, accounts, reports and other materials prepared or received by Architect in connection with the Services and/or the Project. Architect acknowledges, as a material inducement to Owner to enter into this Agreement, that Owner may use the ideas and designs contained in such drawings, specifications, statements, accounts, reports and other materials for the completion of the Services and/or the Project, or



otherwise; provided, however, Owner shall (a) credit Architect's authorship to the extent required by law, and (b) release Architect from liability due to incompleteness of design.

- 9.3 NO RELEASE.** Termination of this Agreement shall not relieve Architect of liability for violations of this Agreement or for any negligence, or other misconduct of Architect or any of its employees, subcontractors, or Consultants. In the event of a termination, Architect hereby consents to employment by Owner of a substitute architect to complete the Services, with the substitute architect having all rights and privileges of Architect.

## **ARTICLE 10 – DOCUMENTS**

- 10.1 RECORD DRAWINGS.** Architect shall provide Record Drawings (one (1) electronic file in accordance with Owner's CAD Standards Manual and in the media prescribed by Owner; and two (2) sets large format prints) and record specifications (two bound volumes) within ninety (90) days of Substantial Completion. Record Drawings shall be based on the as-built drawings prepared by Contractor during the course of construction and must include all changes made to the drawings and specifications by addenda, Architect's supplemental instructions, field orders, field reports, requests for information, shop drawings, Change Orders, field conditions and all other directives and information resulting in a change to the initial design. All revisions or changes noted on the as-built drawings shall be properly annotated and cross referenced on the Record Drawings. Each sheet shall be prominently noted "Record Drawing" and shall bear Architect's notations reflecting the information contained in the as-built drawings has been checked.

- 10.2 USE OF DOCUMENTS.** All Construction Documents are deemed to be instruments of service and Architect shall retain ownership to such documents, subject to the following provisions of this Section 10.2.

10.2.1 *License.* Owner shall be permitted at all phases and stages of the Project to retain copies, including reproducible copies and CADD copies, of the Construction Documents for information and reference in connection with Owner's use and occupancy of the Project. Providing Architect has been fully paid for services rendered, Architect shall grant Owner an irrevocable, fully paid-up, perpetual license and right to use the Construction Documents, including the originals thereof and the ideas and designs contained therein, for the purpose of completing the Project in the event this Agreement is terminated or modified to limit the scope of the Services. This license will survive the termination or expiration of this Agreement. If this Agreement expires, is terminated or limited in scope, Architect hereby expressly 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.

10.2.2 *Ownership*. Upon Owner's final payment for Services performed by Architect, the Construction Documents shall become the property of Owner to the extent allowed by Applicable Law. Owner may utilize any or all of the Construction Documents for the repair, completion, maintenance, modification, expansion or renovation of the Project. Owner understands that the Construction Documents may be inappropriate for use in the construction of any other project. Architect shall not be responsible for the use or workability of the Construction Documents in connection with any project other than the Project and in event of their use in connection with any other project, Owner shall remove Architect's seal, the seal of any other designers and any reference to Architect and other designers from such documents, and Owner to the extent allowed by the Constitution and laws of the state of Texas shall defend, indemnify and hold the Architect harmless from any and all claims or liabilities arising there from.

10.2.3 *Required Disclosures*. Submission or distribution of any or all of the Construction Documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of Architect's rights.

10.2.4 *Inspection by Others*. In the event a federal grant or other federal financing participates in the funding of this Project, Architect shall permit access to and grant the right to examine its books covering its Services, comply with all federal agency requirements as to work hours, overtime compensation, nondiscrimination, contingent fees, etc., and attend meetings, prepare reports and submit data for approval, as required by the agency involved.

**10.3 REPLACEMENT.** If any of the plans, specifications and other design and Construction Documents or other work materials produced or used by Architect pursuant to this Agreement are damaged or destroyed by fire or other casualty at Architect's premises, Architect shall prepare and provide Owner with new copies of any such documents or materials, at no additional cost to Owner.

## ARTICLE 11 – INDEMNIFICATIONS

**11.1 GENERAL. TO THE FULLEST EXTENT PERMITTED BY LAW, AND AS CONSIDERATION FOR THE TERMS AND CONDITIONS OF THIS AGREEMENT, ARCHITECT (“INDEMNITOR”) AGREES TO INDEMNIFY AND HOLD HARMLESS THE TEXAS SOUTHERN UNIVERSITY AND/OR ANY OF ITS DIRECTORS, BOARD MEMBERS, REGENTS, ADMINISTRATORS, AGENTS, EMPLOYEES AND OFFICERS (“INDEMNITEES”) FROM, DAMAGES, LOSSES, LIABILITIES, LIENS, COSTS AND/OR EXPENSES, INJURIES, JUDGMENTS AND EXPENSES (INCLUDING REASONABLE ATTORNEY FEES AND OTHER COSTS OR EXPENSES) (EACH, A “CLAIM”) PROVIDED THE CLAIM: (1) IS RELATED TO BODILY INJURY, SICKNESS, DISEASE, DEATH OR LOSS OR DAMAGE TO REAL OR PERSONAL PROPERTY, INCLUDING**

**LOSS OF USE RESULTING THEREFROM (COLLECTIVELY, "DAMAGE"); AND (2) TO THE EXTENT SUCH CLAIM IS CAUSED BY A NEGLIGENT ACT OR OMISSION BY ARCHITECT, AN ARCHITECT'S CONSULTANT, OR ANY OTHER PARTY FOR WHOSE ACTS EITHER OF THEM IS LEGALLY LIABLE (EACH, AN "INDEMNIFYING PARTY").**

11.1.1 Architect's indemnity obligations in the preceding paragraph do not apply to a Claim resulting from Owner's negligence when such negligence causes the damage which is the basis of the Claim. In the event Architect and Owner are found jointly liable by a court of competent jurisdiction, liability for the Claim will be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to Owner under Texas law and without waiving any defenses of the parties under Texas law.

**11.2 INTELLECTUAL PROPERTY. ARCHITECT AGREES TO RELEASE, INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, OR COPYRIGHT, ARISING BY OR OUT OF ANY OF THE SERVICES OR THE USE BY ARCHITECT OR BY OWNER AT THE DIRECTION OF ARCHITECT, OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY ARCHITECT AND ARCHITECT SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. ARCHITECT DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER'S OR OWNER'S CONSULTANT'S DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH ARCHITECT AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.**

**11.3 SURVIVAL.** The indemnities contained herein shall survive the completion of the Services and the expiration or termination of this Agreement.

## **ARTICLE 12 – ARCHITECT'S REPRESENTATIONS**

**12.1 COMPLIANCE WITH LAW.** Architect will exercise professional due care, as set forth in Paragraph 2.1, to design the Project to be in compliance with all Applicable Laws as they are properly interpreted by the Appropriate Authorities throughout the term of this Agreement. Architect will be responsible for all reasonable costs, fees, penalties, awards

and/or damages, and any interest thereon, resulting from Architect's default under the immediately preceding sentence.

12.1.1 Architect will exercise professional due care, as set forth in Paragraph 2.1, to design the Project to comply with the requirements of *Texas Government Code* Section 447.004.

- 12.2 ADEQUACY OF SERVICE.** Architect represents, warrants and covenants to allocate adequate time, personnel and resources as necessary to perform the Services within the time anticipated by this Agreement, and any amendments or changes to the same. However, it is understood that Architect's services shall be performed as expeditiously as is consistent with the generally accepted standard of professional skill and care. All staff assigned by Architect to perform all or any part of the Services shall be qualified by training and experience to perform their assigned tasks.
- 12.3 NO IMPEDIMENTS.** Architect represents, warrants and covenants that there are no obligations, commitments, or impediments of any kind known to Architect that will limit or prevent performance of the Services by Architect.
- 12.4 ACCURACY.** Architect agrees that the Services shall, in accordance with the standard of professional skill and care set forth in Paragraph 2.1, be accurate and free from any material errors and omissions. Neither acceptance nor approval of a Service by Owner shall relieve Architect of any of its professional duties or release it from any liability, it being understood that Owner is, at all times, relying upon Architect for its skill and knowledge in performing the Services. Owner shall have the right to reject any Service because of any fault or defect in the Project due to any material errors or omissions in the Construction Documents. Upon notice of any such errors or omissions, Architect shall promptly provide any and all services necessary to correct or remedy them at no cost to Owner, even if such correction requires corrective construction work, which work will be paid by Architect to the extent such cost is in excess of the cost that would have been incurred had there been no error or omission. Architect's obligation to correct its errors and omissions 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.
- 12.5 WITHIN BUDGET.** When required as part of its work, ARCHITECT will furnish opinions of probable cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by ARCHITECT hereunder will be made on the basis of ARCHITECT's experience and qualifications and will represent ARCHITECT's judgment as an experienced and qualified design professional. However, users of the probable cost opinions must recognize that ARCHITECT does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.
- 12.6 SUITABLE FOR INTENDED PURPOSE.** Architect represents, warrants and covenants that, upon completion of the Project in accordance with the Construction Documents, the Project will be suitable for its intended purpose.