

**RFQ 14-02-02  
Attachment B**

**ARCHITECT/ENGINEER AGREEMENT**

This Architect/Engineer Agreement (“Agreement” or “Contract” ) is entered into effective as of \_\_\_\_ day of \_\_\_\_\_, 2014 (“Effective Date”), by and between the Houston Independent School District, a body corporate, created under and by virtue of the laws of the State of Texas, (hereinafter "HISD", “District” or “Owner”) and

**{Company.Name}  
{ToContact.DisplayAddress}**

an individual, partnership, or corporation licensed to practice architecture in the State of Texas (hereinafter “A/E”) for the following Project which is further described in Article 13.

**{Projects.Name}**

Now, therefore, HISD and A/E, for the consideration hereinafter set forth, agree as follows:

**Definitions**

**Architect/Engineer (A/E):** The individual, partnership or corporation named above, licensed to practice architecture in the State of Texas, and obligated to perform the services outlined in this Agreement.

**Construction Budget:** That portion of the Project Budget allocated for the Construction Cost.

**Construction Cost:** The total cost or, to the extent the Project is not completed, the estimated cost to HISD of all elements of the Project designed or specified by the A/E. The Construction Cost shall include the cost of Fixed Equipment as defined in the Preliminary Program of Requirements (PPR). The cost of Moveable Equipment and Furniture, as defined in the PPR, is excluded from the Construction Cost of the Work. The Construction Cost does not include the compensation of the Architect, the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of HISD, as provided in Article 4.

**Construction Schedule:** The schedule prepared by the General Contractor (GC) establishing completion dates for work activities in accordance with the Contract Documents.

**Construction Contract:** The agreement between HISD and the GC.

**Design Guidelines:** Written instructions to the PM, A/E, and consultants intended to establish standards for equipment, material and finish requirements provided in the HISD Design and Construction Standards document and as adapted and/or modified in writing by HISD.

**Educational Facilities Specifications:** Detailed description of individual space requirements addressing special utilities finishes and fixed equipment provided in the HISD Design and Construction Standards document and as adapted and/or modified in writing by HISD.

**General Contractor (GC):** The organization responsible for construction of the Project according to the documents prepared under this Agreement, which may be a Construction Manager at Risk (CMAR). In the event HISD employs a CMAR for the Project, all references to GC herein shall refer to CMAR.

**Preliminary Program of Requirements (PPR):** HISD's Program for the Project, stating HISD's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements.

**Program Manager (PM):** The organization selected to represent HISD in managing the Project. The PM shall perform the services pursuant to a separate agreement with HISD. Should HISD not use a third-party PM on this Project, then any reference to "PM" shall be deemed references to HISD.

**Project:** The work described in Article 13 of this Agreement.

**Project Budget:** Funds allocated for all costs associated with the Project.

**Project Schedule:** A schedule for the Project showing all activities and critical and milestone dates necessary to complete the Project within the allotted time.

**Project Scope:** The Project Scope shall include, but not be limited to, the written description of a Project, the PPR, Educational Facility Specifications, HISD Design and Construction Standards, and any other descriptions provided by HISD or the PM.

## **ARTICLE 1 A/E'S RESPONSIBILITIES**

### **1.1 A/E's Services**

#### **1.1.1 Obligation**

The A/E is obligated to provide the services to be performed by A/E, A/E's employees and A/E's consultants under the terms of this Agreement and all other documents constituting the Project Scope for the Project described at Article 13 of this Agreement.

### **1.1.2 Standard of Care**

The A/E shall exercise a degree of care and diligence in the performance of all services under this Agreement in accordance with the professional standards prevailing among architects in Houston, Texas, skilled in design for projects of similar scope, and all of the A/E's services shall be performed as expeditiously as is consistent with said standards and the orderly progress of the Work. Promptly after the execution of this Agreement, the A/E shall prepare and submit to the PM for HISD to approve in writing, a detailed schedule for the performance of the A/E's services to meet HISD's project milestone dates which are included in this Agreement in Article 13. The A/E's schedule shall include allowances for periods of time required for HISD's review and for approval of submissions by authorities having jurisdiction over the Project. The time limits established by this schedule over which A/E has control shall not be exceeded without written approval from HISD.

### **1.1.3 Time**

The services covered by this Agreement are subject to the time limitations contained in this Agreement. Time is of the essence of this Agreement.

The A/E's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. Time limits established by the schedule provided for under Section 1.1.2 shall not, except for reasonable cause, be exceeded by the A/E.

### **1.1.4 A/E Professional Responsibility**

On the Project HISD is using its own staff, a PM, an A/E, and a GC as a team. A/E understands that while other members of the team may suggest design ideas and components for the Project, these suggestions are to be fully reviewed by the A/E and its consultants, and these suggestions do not relieve the A/E of its professional responsibility to HISD for the complete design of the Project. Further, to the extent such suggestions are incorporated into the design of the Project, A/E shall be responsible for the proper integration and coordination of all design changes.

### **1.1.5 Continuation of Services During Dispute**

If there is a dispute between the A/E and HISD respecting any service provided or to be provided hereunder by the A/E, including a dispute as to whether such service is a Basic Service or Additional Service, the A/E agrees to continue providing on a timely basis all services to be provided by the A/E hereunder, including any service as to which there is a dispute.

### **1.1.6 Direction by HISD**

A/E shall work with the PM, HISD representative, other HISD consultants, and staff as directed by HISD.

## **ARTICLE 2 SCOPE OF A/E BASIC SERVICES**

### **2.1 General**

#### **2.1.1 Basic Services**

The A/E's Basic Services consist of all of the services required to be performed by A/E, A/E's employees and A/E's consultants under the terms of this Agreement except the services identified as Additional Services in Article 3. Basic Services includes normal civil, structural, mechanical and electrical engineering services, plumbing, food service, acoustical and landscape services, accessibility design, cost estimating, and any other design services that are normally or customarily furnished and reasonably necessary for the Project. The A/E shall contract and employ at its expense consultants necessary for the design of the Project, and such consultants shall be licensed as required by the State of Texas and approved in writing by HISD. Refer to Section 3.1.7 for roofing consulting services.

#### **2.1.2 Designation of Principal**

The A/E shall designate a principal of the firm reasonably satisfactory to HISD who shall, so long as employed by A/E and acceptable to HISD, remain in charge of architectural services through completion and be available for general consultation throughout the Project. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by HISD, prior to replacement.

#### **2.1.3 Coordination of Drawing and Design Documentation**

Except as otherwise expressly provided herein, A/E is responsible for a complete design of the Project and retention of all subconsultants necessary in connection therewith. A/E shall be responsible for the coordination of all drawings and design documents relating to A/E's design and used on the Project, regardless of whether such drawings and documents are prepared by A/E and expressly including design changes contemplated by Section 1.1.4. A/E shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through A/E and for their compliance with all applicable codes, ordinances, regulations, laws and statutes.

#### **2.1.4 Interface with Appropriate Authorities**

The A/E shall assist HISD in fulfilling requirements set forth by appropriate authorities and/or funding agencies whose interest bears on the design, cost and/or construction of the Project.

#### **2.1.5 Project Meetings**

The A/E shall attend all Project meetings. The A/E shall record, transcribe, and distribute minutes of meetings to all attendees and other appropriate parties within 2 working days of the meeting. The A/E shall attend a minimum of one meeting per month to provide Project updates to a Project Advisory Team and/or the Parent Teacher Organization and/or members of the community.

### **2.1.6 Hazardous Materials**

Unless otherwise provided in this Agreement, the A/E shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site. Should the A/E become aware of the presence of hazardous materials or toxic substances at the Project site, the A/E shall promptly notify HISD, the PM, and GC.

### **2.1.7 Scope of Services Change**

The duties, responsibilities and limitations of authority of the A/E may be reasonably restricted, modified or extended by HISD after the date of this Agreement, and if they are substantially restricted, modified or extended, then the A/E's fixed compensation shall be equitably adjusted upward or downward as deemed appropriate by HISD.

## **2.2 Schematic Design Phase**

### **2.2.1 Project Specific A/E Orientation**

The A/E shall attend a Project Orientation Meeting conducted by the PM. During the orientation, the PM shall review the Project Scope, the Project Schedule, which includes design phase milestones, and the Construction Budget.

### **2.2.2 Third Party Testing**

The A/E shall advise HISD of any need or advisability of HISD's securing tests, analyses, studies, reports, or consultant's services, not to be otherwise provided by A/E, in connection with the development of the design and construction documents for the Project.

### **2.2.3 Existing Conditions/As-Built**

The A/E shall verify the observable existing conditions of the Project and verify any existing as-built drawings. The A/E shall document observable as-built conditions as required for the design of the Project

### **2.2.4 Scope Verification**

The A/E shall familiarize itself with the site and review the PPR, Educational Facility Specifications, and Design Standards furnished by HISD to ascertain the requirements of the Project, and shall arrive at a mutual understanding of such requirements with HISD and the PM. The A/E shall consult, to the extent required by HISD, with authorized employees, agents, consultants and/or representatives of HISD relative to the design and construction of the Project, and shall adhere to the furnished design considerations unless otherwise authorized by HISD in writing. The A/E shall verify availability of all utilities necessary for the Project.

### **2.2.5 Schedule Verification**

The A/E shall confirm that the Project Scope can be designed and constructed within the time limits outlined in the Project Schedule. The A/E shall prepare a detailed design phase schedule which includes all review and approval periods during the schematic design, design development and construction document phases.

### **2.2.6 Budget Verification**

The A/E shall confirm that the Project Scope can be designed and constructed for the dollar amount of the Project Budget.

### **2.2.7 Scope, Schedule, and Budget Reconciliation**

The A/E shall work with HISD and the PM to reconcile any differences between HISD's Project Scope, Schedule, and Budget. Reconciliation of the Project Scope, Schedule and Budget shall be made in terms of one another. All revisions shall require written approval of HISD.

### **2.2.8 Project Meetings**

The A/E shall attend a minimum of two meetings per month conducted by the PM and attended by HISD at its option. Such meetings shall serve as a forum for the exchange of information concerning the Project and the review of schematic design progress. In addition, the A/E shall attend a minimum of one meeting per month to provide Project updates to a Project Advisory Team and/or the Parent Teacher Organization and/or members of the community. The A/E shall record, transcribe, and distribute minutes of meetings to all attendees and other appropriate parties within 2 working days of the meeting.

### **2.2.9 Value Engineering**

The A/E shall provide to HISD and the PM value engineering studies of major construction components during Schematic Design.

### **2.2.10 Schematic Design Documents**

**2.2.10.1** Based on the mutually agreed-upon Project Scope, Schedule and Construction Budget requirements between A/E and HISD, or its designated representative, the A/E shall prepare, for approval by HISD, and the PM, Schematic Design Documents consisting of drawings and narrative descriptions necessary to describe the concept of the Project. The Schematic Design Documents shall be provided to the PM for review. The PM shall provide recommendations to HISD regarding the documents. The Schematic Design Documents shall be approved in writing by the PM and HISD before being deemed acceptable.

**2.2.10.2** Should there be substantial revisions to the Project Scope or PPR after the approval of schematic drawings, which changes substantially increase the scope of design services to be furnished hereunder, A/E shall so notify HISD, before proceeding with revisions necessitated by such changes. No payments, of any nature whatsoever, will be made to A/E for such additional work or services, without prior written approval by HISD. Absent such written approval, all such additional work claims are hereby **Waived and Released** by A/E.

### **2.2.11 Schematic Design Cost and Time Estimates**

The A/E shall provide a Schematic Design Estimate in Cost Model format at the conclusion of the Schematic Design phase. This Schematic Design Estimate shall be accompanied by a report to HISD identifying variances with the original budget and making recommendations for appropriate corrective action, if required.

### **2.2.12 Schematic Design Presentations**

The A/E shall present the Schematic Design to the PM and HISD.

### **2.2.13 Confirmation of Scope, Schedule and Cost**

The A/E shall, at the end of Schematic Design, document in writing that the drawings and descriptions, to the best of the A/E's knowledge and belief, fulfill the Project Scope requirements and that the construction can be completed for the Construction Budget amount, and within the Project Schedule.

## **2.3 Design Development Phase**

### **2.3.1 Design Development Documents**

Upon receipt of written authorization to proceed and based on the approved Schematic Design Documents and comments from HISD and the PM and any adjustments authorized by HISD in the Project Scope, Schedule, or Construction Budget, the A/E shall prepare, for approval by HISD and the PM, Design Development Documents consisting of drawings, outline specifications, and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical, electrical, and plumbing systems, materials and such other elements as may be appropriate. The Design Development Documents shall comply with the requirements of the PPR, Educational Facility Specifications, and HISD Design Standards. The documents shall be provided to the PM and HISD for review. The Design Development Documents must be approved in writing by the PM and HISD before being deemed acceptable.

### **2.3.2 Value Engineering**

The A/E shall perform and provide to HISD and the PM value engineering studies of major construction components during Design Development.

### **2.3.3 Design Development Cost and Time Estimates**

The A/E shall provide a Design Development Estimate in Cost Model format at the conclusion of the Design Development phase. This Design Development Estimate shall be accompanied by a report to HISD and the PM identifying variances with the original budget and making recommendations for appropriate corrective action if required. Unless otherwise directed by HISD, the A/E shall not be authorized to proceed into the next successive phase of design for each respective project until the A/E and the PM have agreed, in writing, upon the Construction Cost estimate. Any delay in this regard shall not entitle A/E to additional compensation.

### **2.3.4 Design Development Design Calculations**

If requested, the A/E shall submit reproduced copies of design calculations for all elements, components and systems of the design to the PM and HISD at no additional cost to HISD.

### **2.3.5 Project Meetings**

The A/E shall attend a minimum of two design development meetings per month conducted by the PM and attended by HISD at its option, as well as other HISD designated parties. These meetings shall serve as a forum for the exchange of information and resolution of design decisions, and will be a point where design progress is reviewed and noted. In addition, the A/E shall attend a minimum of one meeting per month to provide Project updates to a Project Advisory Team and/or the Parent Teacher Organization and/or members of the community. The A/E shall record, transcribe, and distribute minutes of meetings to all attendees and other appropriate parties within 2 working days of the meeting.

### **2.3.6 Design Development Presentations**

The A/E shall present the Design Development Work to HISD and the PM.

### **2.3.7 Confirmation of Scope, Schedule, and Cost**

The A/E shall, at the end of the Design Development Phase, document in writing that the drawings and outline specifications fulfill, to the best of the A/E's knowledge and belief, that the Project Scope requirements and that the construction can be completed for the Construction Budget amount, and within the Project Schedule. Unless otherwise directed by HISD, the A/E shall not be authorized to proceed into the next successive phase of design for each respective project until the A/E and the PM have agreed, in writing, upon the Construction Cost estimate. Any delay in this regard shall not entitle A/E to additional compensation.

## **2.4 Construction Documents Phase**

### **2.4.1 Construction Documents**

Upon receipt of written authorization to proceed and based on the approved Design Development Documents and comments from the PM and HISD, such standards or special documents as may be furnished by HISD, and any further adjustments in the Project Scope or quality of the Project, or in the Construction Budget authorized by HISD, the A/E shall prepare, for approval by PM and HISD, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The drawings shall be prepared in the format of HISD's computer-aided drafting standards in effect at the time of their preparation. The Construction Documents shall include working Drawings and Specifications developed to set forth in detail all aspects of design, and will be used for estimating the Construction Cost, securing bids for constructing the Project, and directing a GC in construction of the Project. The A/E shall exercise usual and customary professional care to see to it that the Construction Documents comply with the Project Scope and PPR, Educational Facility Specifications, HISD Design and Construction Standards, and with applicable laws, statutes, ordinances and codes in effect at the time of their preparation. The Construction Documents shall be provided to the PM and HISD for review. The PM shall provide recommendations to HISD regarding the documents. The Construction Documents must be approved in writing by PM and HISD before being deemed acceptable.

#### **2.4.2 Project Meetings**

The A/E shall attend a minimum of two meetings per month conducted by the PM and attended by HISD at its option, as well as other parties. These meetings will serve as a forum for the exchange of information and resolution of design decisions, and will be a point where design progress is reviewed and noted. In addition, the A/E shall attend a minimum of one meeting per month to provide Project updates to a Project Advisory Team and/or the Parent Teacher Organization and/or members of the community. The A/E shall record, transcribe, and distribute minutes of meetings to all attendees and other appropriate parties within 2 working days of the meeting.

#### **2.4.3 Construction Documents Review**

Construction Drawings and Specifications, or other Construction Documents submitted by the A/E to HISD and the PM for approval, or to any contractors for bidding or negotiation, shall be prepared in conformance to the usual and customary professional standard of care to the end that they adequately describe and specify the project to be built, to a contractor who will be selected to build the project, and comply with all applicable codes, ordinances, statutes, regulations and laws, except to the extent expressly and specifically otherwise stated in detail in writing by the A/E at the time of such submission. In addition, the A/E shall certify that the A/E has informed HISD of any tests, studies, analyses or reports that are necessary or advisable to be performed by or for HISD at that point in time. The A/E shall submit to the PM and HISD for review and approval check sets of Construction Documents when these Documents are 60% and 100% complete. The 60% and 100% check sets of Construction Documents must be approved in writing by PM and HISD.

#### **2.4.4 Bid Documents**

The A/E shall assist the PM and HISD in preparing the necessary bidding information, bidding forms, and Conditions of the Contract, and any Special Conditions as required for special Project requirements. In performing its work on bidding documents, A/E shall take great care to assure that no items are designated as "Owner Furnished" or "Owner Installed," that HISD intended to be included within the scope of the Construction Contract. All documents are subject to HISD approval.

#### **2.4.5 Construction Documents Cost and Time Estimates**

The A/E shall provide a 60% Construction Document Estimate in Cost Model format at completion of 60% of the Construction Document phase. This 60% Construction Document Estimate shall be accompanied by a report to HISD and the PM identifying variances with the original budget and making recommendations for appropriate corrective action, if required. The A/E shall provide a 100% Construction Document Estimate in Cost Model format at the conclusion of the 100% Construction Document phase. This 100% Construction Document Estimate shall be accompanied by a report to HISD, PM and Design Consultant, identifying variances with the original budget and making recommendations for appropriate corrective action, if required. The 100% Construction Document estimate shall be based on an update of the 60% Construction Document estimate. Unless otherwise directed by HISD, the A/E will not be authorized to proceed into the next successive phase of design for each respective project until the A/E and the PM have agreed, in writing, upon the Construction Cost estimate. Any delay in this regard shall not entitle A/E to additional compensation.

#### **2.4.6 Agency Review and Approval**

The A/E shall affix professional architecture and engineering seals and signatures on all Construction Documents, including addenda, as required by Texas and local laws. The A/E shall file documents required for the approval of governmental authorities having jurisdiction over the Project.

#### **2.4.7 Permits**

Upon completion and approval of Construction Documents, and prior to the release for bids, the A/E shall submit to the City, the State of Texas, and/or other permitting authorities the required number of sets of plans and specifications in order to expedite the process and time required for the successful bidding GC to secure the building permit(s). Revisions to the Construction Documents required for permitting shall be made by the A/E at no cost to HISD.

#### **2.4.8 Construction Documents Design Calculations**

The A/E shall submit to HISD and the PM copies of design calculations for all elements, components, and systems of the design.

#### **2.4.9 Confirmation of Scope, Schedule and Cost**

The A/E shall, at the end of the Construction Documents Phase, confirm in writing that, to the best of the A/E's knowledge, information and belief, the Drawings and Specifications fulfill the Project Scope requirements and that the construction can be completed for the Construction Budget amount, and within the Project Schedule.

### **2.5 The Bidding Phase**

#### **2.5.1 Notices and Advertisements**

The A/E shall assist HISD and the PM in preparing notices and advertisements to solicit bids or proposals for the Project.

#### **2.5.2 Distribution of Bid Documents**

The A/E shall distribute the required sets of Bid Documents or Requests for Proposals to HISD bidders and plan rooms specified by HISD.

#### **2.5.3 Pre-bid Conference**

The A/E shall attend the Pre-bid Conferences and assist the PM as directed. The A/E shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bid Documents to all prospective bidders in the form of addenda.

#### **2.5.4 Addenda**

The A/E shall prepare addenda, as required, during the bidding period as needed to explain or clarify the intent of the Construction Documents. The A/E shall also provide information to the PM and HISD on the effect of addenda on the Construction Cost and Project Schedule.

### **2.5.5 Bid Opening and Recommendations**

The A/E shall assist HISD at the bid opening, analyze and evaluate bids or proposals as directed, and make recommendations to the PM.

### **2.5.6 Construction Contract**

The A/E shall assist the PM and HISD in the preparation of the Construction Contract between HISD and GC.

### **2.5.7 Construction Set**

The A/E shall assemble a set of Contract Drawings and Specifications, and/or other Documents prepared for construction that includes all revisions required after the Construction Documents were issued for bids. These revisions shall include all addenda, permit revisions, accepted alternates, value engineering, and negotiated revisions. The A/E shall provide the assembled documents to HISD in electronic format (CAD and pdf files).

### **2.5.8 Notice to Proceed**

If requested by HISD, the A/E shall prepare the Notice to Proceed for execution by HISD.

## **2.6 Construction Phase Services**

### **2.6.1 Basic Services Period**

The A/E's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Construction Contract and terminates one year after approval by HISD of the Final Certificate for Payment or LEED® Certification, whichever is later, unless extended by mutual agreement of the A/E and HISD.

### **2.6.2 Pre-Construction Conference**

The A/E shall assist the PM in conducting a Pre-Construction Conference, to be attended by the GC, and HISD at its option, during which the Construction Documents, Project schedule, Project procedures and other pertinent issues shall be reviewed. The A/E shall record, transcribe, and distribute minutes of meetings to all attendees and other appropriate parties within 2 working days of the meeting

### **2.6.3 Project Meetings**

The A/E shall attend weekly construction progress meetings (as appropriate to the scope of the Project and phase of the work) conducted by the PM and attended by HISD at its option, as well as other parties. These meetings shall serve as a forum for the exchange of information and resolution of construction decisions, and will be a point where construction progress is reviewed and noted. In addition, the A/E shall attend a minimum of one meeting per month to provide Project updates to a Project Advisory Team and/or the Parent Teacher Organization and/or members of the community. The A/E shall record, transcribe, and distribute minutes of meetings to all attendees and other appropriate parties within 2 working days of the meeting.

#### **2.6.4 Contract Administration**

The A/E shall cooperate with the PM in providing administration of the Construction Contract as set forth in General Conditions of the Contract for Construction together with, and as amended by other documents included or incorporated into the Construction Contract.

#### **2.6.5 Owner's Representative**

The A/E shall advise and consult with HISD and the PM during construction and until one year after the issuance of the Final Certificate for Payment and/or LEED® Certification, whichever is later. The A/E shall have authority to act on behalf of HISD only to the extent provided in this Agreement unless otherwise modified by written instrument.

#### **2.6.6 Quality Assurance**

The A/E and its consultants shall visit the site no less than twice weekly during the stage of construction or as otherwise determined by HISD and A/E. The A/E shall become generally familiar with the progress and quality of the Work completed and determine if the Work is being performed in accordance with the Contract Documents. However, the A/E shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect, the A/E shall keep the PM and HISD informed of the progress and quality of the Work, and shall endeavor to guard HISD against defects and deficiencies in the Work. The A/E shall promptly submit to the PM a weekly detailed, written report subsequent to each such on-site visit, noting the progress and quality of the Work, and any observed defects or deficiencies in the Work. The A/E shall require the consulting engineers and its other consultants to make on-site observations of the Work and provide written reports as construction progresses. The observations of consulting engineers shall be made as frequently as necessary to verify that construction is proceeding according to Construction Documents, but not less than one site visit per month. The consultants shall also make inspections at the time of Substantial Completion and Final Completion.

#### **2.6.7 Construction Responsibilities**

The A/E shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. The A/E shall not have control over or charge of acts or omissions of the GC, GC's Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

#### **2.6.8 Rejection of Non-conforming Work**

The A/E shall recommend to HISD and the PM the rejection of work which does not conform to the Construction Contract Documents. Whenever necessary, the A/E shall recommend to the PM special inspection or testing of the Work in accordance with the provisions of the Construction Contract Documents, whether or not such Work is fabricated, installed or completed.

### **2.6.9 Schedule Reviews**

The A/E shall assist the PM in evaluating and approving schedules provided by the GC.

### **2.6.10 Review and Certification of Payment**

The A/E shall review and certify the GC's Applications for Payment, by providing information based on A/E's observations at the site, and A/E shall approve Applications for Payment.

### **2.6.11 Consultant Communication**

Communications by and with the A/E's consultants shall be through the A/E.

### **2.6.12 Testing Report**

The A/E shall analyze and make recommendations to the PM as to the acceptability of laboratory test reports and results.

### **2.6.13 Submittal Review**

**2.6.13.1** The A/E shall review and approve or take other appropriate action upon GC's submittals such as Shop Drawings, Product Data and Samples, for the purpose of (1) assuring compliance with applicable laws, statutes, ordinances, codes, orders, rules and regulations; and (2) assuring that the Work affected by and represented by such submittals is in compliance with the requirements of the Construction Contract Documents. A/E shall be responsible for determining what aspect of the Work shall be the subject of Shop Drawings and submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Construction Contract Documents. The A/E's action shall be taken with such reasonable promptness as to cause no delay in the Work.

**2.6.13.2** The A/E's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the A/E, of any construction means, methods, techniques, sequences or procedures. The A/E's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

### **2.6.14 Requests for Change**

The A/E shall prepare requests for changes in the Work, including information necessary for evaluation of the request and the cause of the request. The A/E and consultants shall review and make recommendations to the PM on all proposed changes in the Work, including changes in the Construction Cost priced by the GC, and requests for changes in the Project Schedule.

### **2.6.15 Change Orders**

**2.6.15.1** The A/E shall prepare Change Orders and Construction Change Documents for HISD's approval and execution in accordance with the Construction Contract. The A/E may authorize minor changes in the Work not involving an adjustment in the Construction Contract Sum or an extension of the Construction Contract Time which are consistent with the intent of the Construction Contract Documents ("Contract

Documents”). If necessary, the A/E shall prepare, reproduce, and distribute Drawings and Specifications to describe Work to be added, deleted or modified.

**2.6.15.2** The A/E shall review properly prepared timely requests by HISD or GC for changes in the Work, including adjustments to the Construction Contract Sum or Construction Contract Time. Review of change proposals from Contractors shall include an appropriate assessment by the A/E of proposed labor and material costs, including evaluating labor hours, labor rates, material quantities and unit prices, whenever feasible. A/E shall obtain documentation as necessary in order to complete the assessments. If the A/E determines that the requested changes in the Work are not materially different from the requirements of the Contract Documents, the A/E may issue an order for a minor change in the Work or recommend to HISD that the requested change be denied.

**2.6.15.3** If the A/E determines that implementation of the requested changes would result in a material change to the Construction Contract that may cause an adjustment to the Construction Contract Time or Construction Contract Sum, the A/E shall make a recommendation to HISD, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the GC, the A/E shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a change in services of the A/E. With HISD's approval, the A/E shall prepare a Change Order or other appropriate documentation for HISD's execution or negotiation with the GC. The A/E shall maintain records relative to changes in the Work.

## **2.6.16 Interpretation of the Construction Contract Documents**

### **2.6.16.1 Interpretation of Documents**

The A/E shall interpret the Contract Documents and judge the performance thereunder by the GC, and A/E shall, within a reasonable time, but in any event so as to avoid any delay in the progress of the Work, render such interpretations and clarifications as it may deem necessary for the proper execution and progress of the Work. The A/E's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents and with concurrence of HISD. The A/E shall receive no additional compensation for providing clarification of the Drawings and Specifications.

### **2.6.16.2 Revisions to the Work**

Revisions shall be made without adjustment to the compensations provided for hereunder, unless revisions are made to Drawings previously approved by HISD under previous phases, and such revisions are not attributable to any error or omission of the A/E, in which case such revision services shall be paid as Additional Services. Should there be substantial revisions to the PPR after the approval of schematic drawings, which changes substantially increase the scope of design services to be furnished hereunder, A/E shall so notify HISD, before proceeding with revisions necessitated by such changes. No payments, of any nature whatsoever, will be made to A/E for such additional work or services, without prior written approval by HISD. Absent such written approval, all such additional work claims are hereby **Waived and Released**.



### **2.6.17 Claims Recommendations**

If so requested by HISD, the A/E shall make recommendations on all claims of HISD or the GC relating to the execution and progress of the Work and on all other matters or questions related thereto. The A/E shall render written decisions within a reasonable time on all claims, disputes or other matters in question if so requested by HISD.

### **2.6.18 Material Substitutions**

The A/E and the PM shall review and make recommendations to HISD as to the acceptability of substitutions of materials proposed by the GC. The recommendation shall include, but not be limited to the impact of the substitution on the Project Scope, Schedule and Construction Cost. The materials substitution must be approved in writing by HISD before being deemed acceptable.

### **2.6.19 Checklist**

Prior to issuing a Certificate of Substantial Completion, the A/E shall, with the assistance of the PM and HISD, prepare a checklist of incomplete work and work which does not conform to the Contract Documents. This list shall be attached to the Certificate of Substantial Completion and submitted to the GC to complete the Work, with copies forwarded to the PM and HISD.

### **2.6.20 Occupancy Permit**

The A/E shall assist the GC in obtaining an Occupancy Permit by accompanying governing officials during inspections of the Project if requested to do so by HISD.

### **2.6.21 Accessibility Compliance Certificate**

The A/E shall obtain the Accessibility Compliance Certificate for the Project(s). During the construction phase, the A/E shall obtain the services of a Registered Accessibility Specialist (RAS) when the Project is ready for inspection. The A/E shall accompany the RAS during the inspection. The A/E shall review the inspection report prepared by the RAS, and advise the GC to correct non-complying items that are the responsibility of the GC. If the report identifies non-complying items that are the result of an A/E error or omission, the A/E shall request pricing for the correction of the non-complying items. The A/E shall advise HISD of the cost of correction, and upon HISD's approval, the A/E shall prepare a change order to the Construction Contract. If necessary, the A/E shall make arrangements for extension of deadlines for compliance. After the A/E has verified that all corrections have been made, the A/E shall advise the RAS that the Project is ready for re-inspection. The A/E shall assist HISD in resolution of all non-complying items until such time that the Project has been found to be in substantial compliance of applicable accessibility standards by the Texas Department of Licensing and Regulation (TDLR) and a Notice of Substantial Compliance certificate is issued by TDLR for the Project.

### **2.6.22 Substantial Completion**

In consultation with HISD and the PM, the A/E shall determine when the Project is substantially complete and issue a Certificate of Substantial Completion. At Substantial Completion, the A/E, HISD, and PM shall establish the date for Final Completion, including the submission of all closeout documents, warranties and other documents, in the Project Manual, or as required by the Owner's auditors, which date of Final Completion shall in no event be more than 60 days from the date of Substantial Completion.

### **2.6.23 As-built Documentation**

The A/E and its consultants shall review monthly the GC's As-built drawings for accuracy and completeness, and shall report its findings to GC, the PM and HISD. The A/E shall maintain records of all issued revisions to the Contract Documents, including revisions that result from responses to requests for information from the GC.

### **2.6.24 Warranties and Operation and Maintenance Materials**

The A/E shall review Warranties and Operations and Maintenance Materials provided to the A/E by the GC. The A/E shall notify the GC of any amendments or corrections to these materials necessary to meet the requirements of the Contract Documents. When complete, the A/E shall recommend acceptance of the materials and forward them to the PM.

### **2.6.25 Final Payment**

The A/E shall, upon the GC's completion of the checklist items and in consultation with HISD and the PM, determine when the Project is finally completed. The A/E shall issue a final Certificate of Payment and shall provide to HISD a written recommendation regarding final payment.

### **2.6.26 Delivery of Drawings and Specifications**

Within sixty (60) days after date of Substantial Completion, A/E shall deliver to HISD electronic (CAD and pdf files) versions of construction drawings and specifications, including all A/E modifications made during construction.

### **2.6.27 LEED® Points**

The A/E shall review all requests to use alternatives or other changes to determine any impact on obtaining LEED® points. The A/E shall meet with the GC and HISD as appropriate to discuss any potential impacts.

## **2.7 Post Construction Phase Services**

### **2.7.1 Warranty Period Services**

The A/E and its consultants shall be available for consultation during the GC's Warranty Period.

### **2.7.2 Warranty Expiration Inspection**

The A/E shall inspect the Project no later than thirty (30) days prior to the expiration of the warranty period and prepare a checklist of items to be completed by the GC. The A/E shall forward the checklist to the GC to complete the work, with a copy to the PM and HISD.

## **2.8 Requirements as Basic Services for Projects that Include Additions, Rehabilitation and/or Repair-Replacement**

### **2.8.1 On-Site Investigation**

For projects involving additions to existing buildings, new construction at sites of existing facilities, rehabilitation, alteration, repair and/or replacement of existing construction, the Basic Services of the A/E shall include the necessary on-site investigations, measurements, and documentation of existing facilities and infrastructure as required; the review of as-built documents, if any, of the existing facility; and comparison of actual construction with such documents and measurements and investigations as required to be fully informed on the observable portions of the existing improvements.

### **2.8.2 Additional Compensation**

No additional fee will be authorized for job site observations and measurements of existing improvements by the A/E.

### **2.8.3 Contractor Verification of Existing Conditions**

In the case of such projects, the A/E shall incorporate into the Construction Documents such requirements as will fix with the GC the responsibility to verify the accuracy of information provided for existing construction conditions, to verify existing conditions and promptly disclose in writing any variances and request directions, to verify the presence of underground utilities and improvements, and to protect existing facilities, including, but not limited to, data networks, intrusion alarms, surveillance systems, intercoms and other infrastructure, from damage resulting from construction operations.

## **ARTICLE 3 ADDITIONAL SERVICES OF THE A/E**

### **3.1 Additional Services**

The following services of the A/E, when authorized in advance in writing by HISD, shall be considered Additional Services and paid for by HISD as provided in Section 10.2.

#### **3.1.1 Special Analysis**

Providing special analysis of HISD'S needs not otherwise included in Basic Services.

#### **3.1.2 Site Studies**

Providing comparative studies of prospective sites.

#### **3.1.3 Surveys**

Providing boundary and topographic surveys prepared by a licensed land surveyor.

### **3.1.4 Geotechnical Reports**

Providing geotechnical soil borings, soil analysis and geotechnical reports prepared by a geotechnical engineer.

### **3.1.5 Traffic Studies**

Providing a traffic study required for obtaining a building permit and/or as requested by HISD prepared by a licensed traffic engineer.

### **3.1.6 Additional Revisions Requested By Owner**

Extensive revisions of Schematic, Design Development and Construction Documents previously approved in writing by HISD, when so directed in writing by HISD; provided, however, that no compensation for Additional Services shall be paid for revisions which may be required when due to errors or omissions by the A/E or when due to the fact that the lowest bona fide construction bid or proposal exceeds the Construction Budget.

### **3.1.7 Roofing Consulting Services**

The A/E shall utilize the services of a qualified, independent roofing consultant, familiar with HISD's expectations and standards, to provide planning, design, construction and administration and warranty phase services. During the installation process, the roofing consultant shall provide daily site visits with a total of not less than 20 hours per week of field inspection services, unless otherwise directed by HISD. The site inspector for the roofing consultant shall be certified and be knowledgeable in the installation of the roofing system being installed. The services of any roofing consultant must be approved in writing by HISD.

### **3.1.8 Consultation Regarding Damaged Work**

Providing consultation concerning replacement of any Work damaged by fire and other causes during construction, and furnishing professional services as may be required in connection with the replacement of such Work.

### **3.1.9 Services Regarding Default of GC**

Providing professional services made necessary by substantial default of the GC in the performance of the Construction Contract.

### **3.1.10 Interior Design and Other Services Related to Furnishings**

Providing interior design and other services required in connection with the selection of furniture and furnishings not included in the Construction Contract.

### **3.1.11 Change Order Preparation**

Preparing change orders and related documents required by changes (whether increases or decreases) in the Project Scope as requested by HISD, and not due to the error or omission of the A/E, and when the volume of change orders substantially exceeds that which could be expected on a project of similar scope.

### **3.2 Services Due to Errors and Omissions by the A/E**

Notwithstanding anything to the contrary expressed elsewhere in Article 3, no services made necessary, in whole or in part, by any fault or omissions of the A/E to perform its duties, responsibilities or obligations under this Agreement, shall be compensated as an Additional Service under this Agreement.

## **ARTICLE 4 OWNER'S RESPONSIBILITIES**

### **4.1 Project Requirements**

HISD shall consult with the A/E regarding requirements for each Project, including HISD'S contemplated objectives, schedule constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. HISD may satisfy its obligations under this Article 4 by or through the PM acting as a representative of HISD.

### **4.2 Owner's Designated Representative**

HISD shall designate a Representative authorized to act on HISD's behalf with respect to the Project. HISD or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the A/E in order to avoid unreasonable delay in the orderly and sequential progress of the A/E's services. Such decisions, or the presence of such representative at the site, shall not at any time relieve the A/E, in whole or in part, from any duty or responsibility placed upon the A/E under the terms of this Agreement.

### **4.3 Surveys**

HISD may elect to have the A/E obtain surveys as an Additional Service as provided for in Article 3. Otherwise, HISD shall furnish surveys. The surveys, obtained by the A/E or furnished by HISD, shall describe physical characteristics, legal limitations and utility locations for the site of the Project, and include a written legal description of the site which shall be a part of this Agreement. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions (if available) and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

### **4.4 Geotechnical Services**

When the services of geotechnical engineers are reasonably required for the Project, HISD may elect to have the A/E obtain these services as an Additional Service as provided for in Article 3. Otherwise, HISD shall furnish the services of geotechnical engineers. HISD's written approval is necessary before the services of geotechnical engineers can be enlisted. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional

recommendations. The A/E shall review the completeness and confirm in writing to HISD the sufficiency of the type of tests and information, whether furnished through the A/E or furnished by HISD.

#### **4.5 Consulting Services**

When the services of other consultants are reasonably required by the Project Scope and are requested by the A/E and approved for the Project by HISD, HISD may elect to have the A/E obtain these services as an Additional Service as provided for in Article 3. Otherwise, HISD shall furnish the services of other consultants. HISD shall approve such consultants only if such consultants are not to be provided by A/E under this Agreement. HISD's written approval is necessary before the services of these other consultants can be enlisted.

#### **4.6 Testing Services**

HISD shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law. Should the A/E or its consultants at any time suspect the presence of asbestos or other hazardous material at the Project site or any related structure, the A/E shall notify the PM and HISD in writing immediately.

#### **4.7 A/E Review of Information Provided by HISD**

The services, information, surveys and reports required by Articles 4.3 through 4.6 shall be furnished at HISD's expense, and, absent the negligence of A/E, the A/E shall be entitled to rely upon the information provided by HISD. The A/E shall provide timely review of such information, surveys and reports and advise HISD whether such data is sufficient for A/E to perform its services under this Agreement.

#### **4.8 Forms and Contract Documents**

HISD shall provide necessary forms of contracts, bonds, General, Supplementary and Special Conditions of the Construction Contract, advertisement for bids, request for proposals, and other forms HISD may deem appropriate.

#### **4.9 No Waiver of Claim**

Nothing in this Agreement, nor any act or failure to act on the part of HISD or the PM shall be construed as a waiver of a claim by HISD for any defects or deficiencies in the Drawings and Specifications, or for any other breach of this Agreement.

## **ARTICLE 5 CONSTRUCTION COST**

### **5.1 Responsibility for Construction Cost**

#### **5.1.1 Basis for Construction Budget**

A/E's evaluations of HISD's Project Budget and the A/E's preliminary estimates of Construction Cost and detailed estimates of Construction Cost, represent the A/E's best judgment as a design professional familiar with the construction industry and local market conditions.

### **5.1.2 Construction Budget**

The Construction Budget for the Project, which is established as a condition of this Agreement, is

**{Projects.UserText1}**

This Construction Budget shall not be exceeded unless the amount is approved by the HISD Board and changed in writing by HISD. When multiple campuses or sites are included in this Agreement, the Construction Budget for each campus or site shall not be exceeded unless approved by the HISD Board and changed in writing by HISD.

### **5.1.3 Construction Budget Exceeded by All Bids**

If the Construction Budget is exceeded by the lowest bonafide bid or negotiated proposal, HISD may:

1. Cooperate in revising the Project Scope and/or quality as required to reduce the Construction Cost prior to rebidding. In this event, the A/E shall modify the Contract Documents without additional charge as necessary to comply with the Construction Budget.
2. Authorize rebidding or re-issuing for proposals of the Project within a reasonable time;
3. Increase the Construction Budget; or
4. Abandon the Project and terminate in accordance with Article 7.

## **ARTICLE 6**

### **USE OF A/E'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

#### **6.1 Drawings Specifications and Documents**

The Drawings, Specifications and other documents prepared by the A/E and A/E's consultants for the Project shall become the property of HISD, whether the Project is completed or not. HISD shall be furnished and permitted to retain reproducible copies and electronic versions of A/E's Drawings, Specifications and other documents.

#### **6.2 Use of Documents by HISD**

The documents prepared by A/E may be used as a prototype for other facilities by HISD. HISD may elect to use the A/E to perform the site adaptation and other architectural services involved in reuse of the prototype. If so, the A/E is obligated to perform the work for an additional compensation that will fairly compensate the A/E and its consultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Agreement. If HISD elects to employ a different architect to perform the site adaptation and other architectural services involved in reuse of the prototype, that architect shall be entitled to use A/E's consultants on the same basis that A/E would have been entitled to use them for the work on the reuse of the prototype, and such architect shall be entitled, to the extent allowed by law, to duplicate the design and review and refer to the Construction Documents, approved shop drawings and calculations, and change order drawings in performing its work. The A/E will not be responsible for errors and omissions of a subsequent architect and will not be responsible for damages resulting

from its own errors and omissions to the extent that the drawings result from a reuse by other professionals on a subsequent project. The A/E shall commit its consultants to the terms of Section 6.2.

### **6.3 Release of Documents upon Termination**

In the event of termination of this Agreement for any reason, HISD shall receive all original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.

### **6.4 Use of Construction Drawings by A/E**

Only the details of the drawings relating to this Project may be used by the A/E on other projects, but they shall not be used as a whole without written authorization by HISD. HISD furnished forms, conditions, and other written documents shall not be used on other projects by the A/E.

## **ARTICLE 7 TERMINATION**

### **7.1 Termination for Cause by HISD**

This Agreement may be terminated by HISD with cause upon not less than seven days written cure notice to the A/E. In the event A/E:

- (a) fails in any respect to prosecute all or part of its work with promptness and diligence; or
- (b) fails to perform or honor any of the provisions in this Agreement; or
- (c) becomes insolvent, bankrupt or is put into receivership; or
- (d) fails to pay its sub consultants, vendors or others providing labor, materials, or services to the Project, by through or under A/E when due; or
- (e) appears that it is unable to meet the Owner's scheduling requirements for A/E's work in whole or in part,

then A/E, failing to cure, shall be in default and HISD may immediately terminate for cause and withhold any payment then due or becoming due to compensate HISD for any loss it incurs in relation to the default. In the event HISD incurs costs in excess of A/E's Agreement amount to complete A/E's work, then A/E shall compensate HISD for any shortfall upon demand.

### **7.2 Termination by HISD for Convenience**

#### **7.2.1 Timing**

HISD may at any time, at will and without cause, terminate any part or all of the Agreement. Such termination for convenience shall be effective immediately by giving A/E written notice. A/E shall continue to prosecute any part of the Agreement not terminated. A/E shall require a comparable termination for convenience provision in all lower-tier subcontracts and agreements.

### **7.2.2 Payments**

If HISD terminates any part or all of this Agreement for convenience, HISD shall incur no liability to A/E because of such termination, except that A/E may be entitled to payment for (i) Work properly executed in accordance with this Agreement prior to the effective date of the termination and for (ii) Reimbursable Expenses then due; provided, however, A/E must satisfy the other conditions precedent to payment described in this Agreement. In no event shall A/E be entitled to any other cancellation costs, including but not limited to, special overhead, anticipated profits, or to any direct, indirect, incidental or consequential damages.

### **7.3 Termination by A/E**

If HISD substantially breaches this Agreement, then A/E may terminate this Agreement if A/E gives HISD written notice of the basis on which it seeks to terminate, and HISD has failed to commence to cure any such breach within 30 days of receipt of such notice.

### **7.4 Improper Termination by HISD**

If a court, arbitration panel, arbitrator or other tribunal finds that HISD's termination of A/E was improper or wrongful, such termination shall be converted to a termination for convenience and A/E's damages and rights of recovery shall be governed thereby.

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

### **8.1 Jurisdiction and Venue**

This Agreement shall be construed, governed by, and enforced in accordance with the laws of the State of Texas without regard to the conflicts or choice of law principles thereof. Venue of any dispute related to this Agreement shall lie exclusively in Harris County, Texas. The parties irrevocably consent to the jurisdiction of the State of Texas, and agree that any court of competent jurisdiction sitting in the County of Harris, State of Texas, shall be an appropriate and convenient place of venue, and shall be the sole and exclusive place of venue to resolve any dispute with respect to the Agreement.

### **8.2 Attorney Fees**

In connection with the Owner's defense of any suit against it and/or the Owner's prosecution of any claim, counterclaim or action to enforce any of its rights and/or claims hereunder, in which the Owner prevails as to all or any portion of its defense(s), claims, counterclaims or actions, Owner shall be entitled to recover its actual attorneys' fees and expenses incurred in defending such suit and/or in prosecuting such claim or action.

### **8.3 Nature of Binding Agreement Between Parties**

HISD and the A/E each binds themselves, and their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, corporate officers, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. A/E shall not assign, sublet or transfer this Agreement without the written consent of HISD.

#### **8.4 Entire and Integrated Agreement**

This Agreement represents the entire and integrated agreement between HISD and A/E and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both HISD and A/E. In the event that any terms or conditions in any Exhibit attached hereto directly or indirectly contradict or conflict with any terms or conditions in this Agreement, the terms and conditions of this Agreement shall control.

#### **8.5 No Contractual Relationship with a Third Party**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either HISD or A/E.

#### **8.6 Use of Design in A/E Promotional Material**

The A/E shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the A/E's promotional and professional materials. The A/E's materials shall not include HISD's confidential or proprietary information if HISD has previously advised the A/E in writing of the specific information considered by HISD to be confidential or proprietary.

#### **8.7 Format and Timely Performance**

##### **8.7.1 Format for Delivery of all Services**

The format for delivery of all services associated with this Agreement will require expedient and timely response by the A/E and consultants to assure compliance with the Project Schedule.

##### **8.7.2 Development and Maintenance of Schedules**

The A/E and consultants shall be required to jointly develop and maintain schedules acceptable to HISD and the PM.

##### **8.7.3 Timely Return of All Shop Drawings, Samples and Responses**

In the Construction Administration phase, special attention shall be afforded timely return of shop drawings, samples and responses to requests for direction, by the A/E and its consultants.

#### **8.8 Compliance with Federal Requirements**

In the event a federal grant or other federal financing participates in the funding of the Project, the A/E shall permit access to and grant any federal representatives the right to examine his books covering his work under this Agreement. The A/E shall comply with federal requirements as they relate to the Project.

#### **8.9 Confidential Information**

The A/E shall not disclose or permit the disclosure of any confidential information, except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this Agreement.

### **8.10 Enforceability of Provisions**

If any provision of this Contract is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be reformed to provide as close to the original intent of the provision as possible while still being enforceable. However, in the event such a reformation is not possible then (i) such provision shall be fully severable; (ii) this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been comprised a part of this Contract; and (iii) the remaining provisions of this Contract shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Contract. In the event any law, ordinance, standard, specification, rule or authority is referenced and/or incorporated herein, such reference shall be construed to be the law, ordinance, rule or authority in effect at the time of performance of A/E's services or other obligation to which such law, ordinance, rule or authority applies. Further, in the event that a provision of the contract conflicts in such a manner that the provision of the contract requires something impermissible according to any applicable law, ordinance, rule or authority, the Contract shall be interpreted to give precedence to the applicable, law, ordinance, rule or authority. An Agreement provision that requires the A/E to satisfy a higher level of performance or standard than a law, ordinance, rule or authority shall be given precedence in interpreting the obligations of the A/E.

### **8.11 Sexual Harassment Forbidden**

Sexual harassment of employees of the A/E or employees or students of HISD by employees of the A/E is strictly forbidden. Any employee of the A/E who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the A/E, including dismissal.

### **8.12 Conflict of Interest**

Any firm having common ownership with the A/E shall be prohibited from providing architectural, engineering or other design related services on, or the construction of, the Project. In addition, no employee of HISD shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee of HISD participate in any decision relating to this Agreement which affects his or her interest or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. This subsection is subject to provisions of the Texas Local Government Code at 171.002 et. seq., which require a public official with substantial interest in a business entity to file an affidavit stating the nature and extent of the interest and to abstain from a vote or decision on any matter involving the business entity.

### **8.13 References to Singular/Plural and Masculine/Feminine**

References made in the singular shall include the plural and the masculine shall include the feminine or the neuter.

### **8.14 Provision of Services In Compliance with Applicable Laws**

The A/E hereby represents that the services provided hereunder shall be performed by, or under the direct supervision of, an A/E duly licensed pursuant to licensing laws, including but not limited to Chapter 1051, V.T.C.A. Occupations Code, Regulation of Architecture and Related Practices, and Chapter 1001, V.T.C.A. Occupations Code, Texas

Engineering Practice Act, as applicable. Furthermore, A/E hereby agrees to exercise usual and customary professional care to assure that all plans and specifications, drawings, and all other documents and services provided hereunder, comply with applicable laws, statutes, building and zoning codes, ordinances, rules and regulations generally and specifically related to public school districts, and with the aforementioned Chapters 1001 and 1051. Additionally, A/E represents to HISD that the Construction Documents it provides HISD are sufficient to direct the GC to construct the Project in accordance with the scope HISD has provided the A/E.

### **8.15 M/WBE Participation**

The A/E, immediately after the execution of this Agreement, shall report their M/WBE participation goal as a percent of the total Basic Services Compensation. During the performance of all services under this Agreement, A/E and its consultants shall comply with all M/WBE policies of HISD as of the date of this Agreement, and as amended during the course of the Work. The information shall be identified per firm, discipline and participation.

### **8.16 Mediation**

#### **8.16.1 Mediation at Option of HISD**

At the sole option of HISD, any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

#### **8.16.2 Mediation Fees**

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Houston, Texas.

### **8.17 Audit**

A/E's records, which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available), written policies and procedures; subcontract files (including bid recaps, original estimates; estimating work sheets; correspondence; back-charge logs and supporting documentation and any other supporting evidence deemed necessary by HISD to substantiate charges related to any matters related to the Agreement (including interviews with A/E's personnel and Professional Consultant personnel) shall be open to inspection and subject to audit and/or reproduction by HISD's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (i) A/E compliance with Agreement requirements; (ii) compliance with HISD's business ethics policies; and (iii) compliance with provisions for pricing or claims submitted by the A/E or any of its payees. HISD or its designee shall be afforded access to all of the A/E's records pursuant to the provisions of this Article throughout the term of this Agreement and for a period of five years after final payment, or longer if required by law, or until pending litigation has been completely and fully resolved, whichever occurs last.

### **8.18 Business Ethics**

During the course of pursuing agreements, and the course of performance of this Agreement, A/E and its Professional Consultants and vendors shall maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of HISD, its contractors, consultants, or its Program Managers, or to family members of any of them. At any time A/E believes there may have been a violation of this obligation, A/E shall notify HISD of the possible violation. HISD is entitled to request a representation letter from A/E, its Professional Consultants or vendors at any time to disclose all things of value passing from A/E, its professional consultants or vendors to HISD's personnel, its contractors, consultants and Program Managers.

### **8.19 Relationship of the Parties**

It is understood and agreed that A/E is a separate legal entity from HISD and neither it nor any employees, volunteers, or agents contracted by it shall be deemed for any purposes to be employees or agents of HISD. A/E assumes full responsibility for the actions of its personnel and volunteers while performing any services incident to this Agreement, and shall remain solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), workers' compensation, disability benefits and like requirements and obligations.

### **8.20 No Waiver of Immunity**

HISD does not waive or relinquish any immunity or defense on behalf of itself and its officers, trustees, employees, and agents as a result of their execution of this Agreement and performance of the functions or obligations described herein. Nothing herein shall be construed as creating any personal liability on the part of any officer, trustee, director, employee or representative of HISD.

### **8.21 Authorization of Agreement**

Each party represents and warrants to the other that the execution of this Agreement has been duly authorized, and that this Agreement constitutes a valid and enforceable obligation of such party according to its terms.

### **8.22 No Waiver**

No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of such breach.

### **8.23 National Criminal Background Checks**

Pursuant to Sections 22.085 and 22.0834 of the Texas Education Code, A/E hereby certifies that all employees, consultants and volunteers of the A/E who have continuing duties related to the contracted services; and has or will have direct contact with students have passed a national criminal history background record information review as required by those sections.

A/E shall send or ensure that the employee or applicant sends to the Texas Department of Public Safety ("DPS") information that is required by the DPS for obtaining national criminal history record information, which may include fingerprints and photographs. DPS shall obtain the person's

national criminal history record information and report the results through the criminal history clearinghouse as provided by Section 411.0845, Government Code.

A/E must also obtain certifications from all consultants that their employees to whom Section 22.0834 applies have also passed a national criminal history background record information review.

A/E must also provide assurances that all of its employees, consultants and volunteers, including those hired before, on, and after January 1, 2008, who have contact with students have passed a criminal history background check current within the last year. If an employee, consultant or volunteer of the A/E has a criminal conviction or has received deferred adjudication for a felony offense or a misdemeanor involving moral turpitude, the District may elect not to enter into this Contract, or cancel the Contract.

WARNING: Section 44.034 of the Texas Education Code requires that a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

Failure to comply with the provisions of **Section 8.23** constitutes a default under this Agreement, entitling Owner to terminate this Agreement for cause.

#### **8.24 Business Certificates/Taxes**

All individuals or, entities entering into a contract with HISD must adhere to the following applicable Texas laws as they pertain to their individual type of ownership.

**Corporations** (domestic [formed under Texas law] or foreign [formed under laws of another state]) shall be properly registered with the Texas Secretary of State and the Comptroller of Public Accounts as required by TITLE 34, Part 1, Chapter 3, Subchapter V, Rule 3.546 of the Texas Administrative Code. A current "Certificate of Good Standing" from the Texas Comptroller of Public Accounts shall be made available upon request stating that the corporation charter is current and all Texas Franchise Reports and Taxes are paid.

#### **Partnerships and Joint Stock Companies, and Limited Liability Partnerships**

(domestic [formed under Texas law] or foreign [formed under laws of another state]) shall be, properly registered with the Texas Secretary of State in accordance with Texas Law. All partners in a partnership must file a "Certificate of Limited Partnership" with the Texas Secretary of State, which shall be made available for inspection upon request.

**A/E whether Corporate, Partnership, or Sole Owner must be current on HISD Property Taxes.** If commercial personal property is located in the jurisdiction, current renditions of these properties must be filed with the Chief Appraiser, as required by Chapter 22, Section 22.01, of the Texas “PROPERTY TAX CODE”, and A/E must be current on all applicable ad valorem taxes owing to HISD.

### **8.25 Debarment and Suspensions**

A/E certifies, to the best of its knowledge and belief, that it is not presently debarred, suspended for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

A/E agrees to comply with all applicable requirements of all federal laws, executive orders, regulations, applicable guidelines, and policies governing this program, particularly relating to nondiscrimination. These include but are not limited to: (i) Title VI of the Civil Rights Act of 1964, as amended; (ii) Title IX of the Education Amendments of 1972, as amended; (iii) Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; and (iv) the American with Disabilities Act, as amended.

### **8.26 Use of District Seal, Logo(s), or Phrases**

The A/E shall not use the district’s seal, logo(s), or any phrase associated with the district in any documents or deliverables without the written permission from the Board of Education, the Superintendent of Schools, or their designee.

### **8.27 Texas Public Information Act (TPIA)**

A/E acknowledges that HISD is subject to the Texas Public Information Act (TPIA). As such, upon receipt of a request under the TPIA, HISD is required to comply with the requirements of the TPIA. In the event that the request involves documentation that the A/E has clearly marked as confidential and/or proprietary, HISD shall provide the A/E with the notices under the TPIA. A/E acknowledges that it has the responsibility to file exceptions with the Texas Attorney General's Office on why the documents identified as confidential and/or proprietary fall within an exception to public disclosure.

### **8.28 Notice**

Any notice required to be given relating to this Agreement shall be in writing and shall be duly served when hand-delivered to the addressees set forth below, or shall have been deposited, duly registered or certified, return receipt requested, via the United States Postal Service, addressed to the other party at the following addresses. Either party may designate a different address by giving the other party ten (10) days prior written notice in the manner provided above.

To: **{Company.Name}**  
Attn: {Contacts.DisplayName}  
{ToContact.DisplayAddress}

To: **Houston Independent School District**  
Attn: Robert Sands  
3200 Center Street  
Houston, Texas 77007

Any party may designate a different address by giving the other party ten (10) days written notice in the manner provided above.

**8.29 Local Office**

The A/E shall have an established place or places of business in the local area during the term of this Agreement. Local area means eight counties in and surrounding the Houston city limits. The counties are Harris, Fort Bend, Montgomery, Brazoria, Galveston, Chambers, Waller, and Liberty.

**ARTICLE 9  
PAYMENTS TO THE A/E**

**9.1 Payments on Account of Basic Services**

**9.1.1 Payment Schedule**

Payments on account of the A/E's Basic Services performed shall be made monthly, upon submission of A/E's original signed invoice, limited to the proportion of services performed to date, in accordance with the following allocation by phase of the A/E's total compensation. In the event the A/E submits to HISD invoices, statements, reports, etc. that are incomplete, inaccurate, or in need of substantial internal research, such action could result in delay of payment. HISD shall not be responsible for any interest charges and/or late fees as a result of delayed payment due to time delays caused by inadequate or incomplete information provided in invoices by the A/E. Payment for LEED® certification is a lump sum amount and shall be made upon HISD's receipt of written confirmation from the U.S. Green Building Council of documented and approved points necessary for certification of the Project and submission of A/E's original signed invoice for such certification, provided that the Project receives the points and/or certification required by HISD for the Project.

Phase	Fee
Schematic Design Phase	
Design Development Phase	
Construction Document Phase 60% complete	
Construction Document Phase 100% complete	
Bidding Phase	
Construction Phase	
Punch list and Project Close-out	
Warranty Phase	
LEED® Certification	
<b>Total Contract Amount</b>	

## **9.1.2 Revision of Basic Services Compensation**

**9.1.2.1** Notwithstanding the foregoing or Section 10.1.1, when any phase or phases of the A/E's Basic Services are deleted or otherwise not performed, or any portion of a phase, or any portion of the scope of the A/E's Basic Services are deleted or otherwise not performed, or at HISD's sole discretion the project scope is increased or reduced from the scope of services described in Article 13, or if individual sites are added or deleted, then the fixed compensation for such portions of the A/E's Basic Services shall be payable based on the amount or proportion of services actually performed as determined by HISD, and subject to prior approval of the HISD Board of Education ("Board").

**9.1.2.2** Notwithstanding anything in this Agreement to the contrary, any increase in the Construction Budget as set forth in Section 5.1.2, and increase in A/E's fees as set forth in Section 9.1.1, shall not be effective unless such increase(s) are approved by the HISD Board. Any such increase(s) that may be agreed to by HISD staff prior to Board approval shall be null and void and shall not be binding on HISD. A/E shall not have a claim, either contractually or by quantum merit, for any services rendered prior to any such increase approval(s) by the Board. If the A/E attempts to receive or receives an agreement modification or amendment from a district employee who is not authorized to make changes, the A/E does this at its own risk or peril and risks termination of the Agreement for cause.

## **9.2 Payments on Account of Additional Services**

Payments on account of the A/E's Additional Services, which are authorized in writing by HISD, shall be made monthly upon presentation of the A/E's statement of services rendered, and such supporting documentation as HISD may require. A/E expressly waives any right to payment for an item of Additional Services rendered if A/E does not give written notice of its claim for the services within ninety (90) days of the performance of the item it claims to be Additional Services.

## **9.3 Payments on Account of Reimbursable Expenses**

### **9.3.1 Recovery of Reimbursable Expenses**

The A/E shall be entitled to recover monthly for the expenses set out in Sections 9.3.2, 9.3.3, 9.3.4, 9.3.5, 9.3.6, 9.3.7, and 9.3.8 on the terms set out in those sections for the following expenses when necessarily incurred in performing services under this Agreement by A/E or its consultants. No other categories of expenses are reimbursable to A/E. The actual cost with applicable taxes only is allowed with no percentage for mark-up.

### **9.3.2 Transportation and Traveling Outside of Greater Houston Area**

Cost of transportation and living when traveling outside of the greater Houston area in connection with the Project, at HISD's request and authorization.

### **9.3.3 Reproduction of Actual Construction Documents**

Cost of reproduction for actual Construction Documents (plans, specifications and addenda only for bidding and construction) and reproduction of required documents for formal submittal of Schematic Design and Design Development, and the cost of reproduction printing for 60% and 100% Construction Document check sets only as ordered by HISD, and cost of reproduction of HISD's drawings of existing structures. A/E shall utilize only printing companies approved in advance by HISD.

### **9.3.4 Models/Color Renderings**

The expense of models or color renderings for HISD's use, if authorized in writing by HISD in a pre-determined lump sum amount.

### **9.3.5 Delivery Services**

Reasonable costs of necessary delivery services in the Houston area.

### **9.3.6 State Accessibility Plan Review and Inspection**

Cost of reproductions, application fees for approval of plans, and inspection fees for approval of construction paid to the Texas Department of Licensing and Regulation or a Registered Accessibility Specialist.

### **9.3.7 Permit Fees and Permit Expediting**

Cost of payment to City of Houston plan checking department and/or plan/permit consulting service to expedite plan checking process, if deemed necessary by HISD, to achieve completion of an accelerated Project Schedule.

### **9.3.8 LEED® On-Line Charges**

Cost of LEED® registration, application, and review fees for projects seeking LEED® certification. Prior written approval from HISD is required before incurring any additional cost associated with appealing a decision on an unapproved LEED® point.

## **9.4 Payments Withheld**

### **9.4.1 Deductions for Sums Withheld From General Contractor**

No deductions shall be made from the A/E's compensation on account of penalty, liquidated damages or other sums withheld from payments to GCs.

### **9.4.2 HISD Not Liable for A/E's Failure to Pay A/E's Consultants**

In no event shall HISD be liable for any of A/E's consultant and/or contracted services. In the event that the Project is delayed or otherwise affected by A/E's failure to pay his consultants and/or contracted services, then HISD has the right to withhold payments otherwise due A/E.

## **9.5 Invoice Back-up Information**

The A/E's original invoices for services performed and expenses incurred shall be accompanied by back-up information in accordance with HISD requirements. A/E records shall be available for inspection by HISD or its designated representative upon request during the Agreement term and for a period of five years after final payment.

## **9.6 A/E's Accounting Records**

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on an hourly basis shall be available for inspection by HISD or HISD's authorized representative at mutually convenient times.

## **ARTICLE 10 BASIS OF COMPENSATION**

**HISD shall compensate the A/E as follows:**

### **10.1 Basic Compensation**

#### **10.1.1 Basic Services**

For A/E's Basic Services, as described in Article 2, compensation shall be the fixed amounts provided at Section 9.1.1. Notwithstanding the foregoing, A/E's compensation for Basic Services is subject to increase or decrease as per Section 9.1.2.

#### **10.1.2 Services Related to Errors and Omissions**

A/E shall promptly correct any defective designs or specifications furnished by, through or under the A/E at no cost to HISD. A/E's change order services relating to A/E errors and/or omissions are deemed to be part of the Basic Services and not Additional Services.

#### **10.1.3 Offset Cost for Change Orders Related to A/E Errors, Acts and Omissions**

HISD shall be entitled to offset against any sums otherwise due A/E, all costs of change orders caused by A/E's negligent errors, acts or omissions under the legal standards governing professional conduct of A/E. In the event such costs exceed any sums due A/E, the A/E shall be liable to HISD for all excess costs and will pay HISD upon demand.

### **10.2 Compensation for Additional Services**

#### **10.2.1 Additional Services**

Unless otherwise agreed in writing, for Additional Services of the A/E, as described in Article 3, but excluding services of consultants, compensation shall be calculated for the reasonable amount of time necessarily spent in accomplishing Additional Services which have been authorized by HISD, at the following rates:

- (a) Principals' time shall be billed at a maximum of \$150.00 per hour. No more than one Principal may be charged to the Project at any one time, unless specifically requested and approved by HISD. Principals under this Agreement shall be:

**{Contacts.DisplayName}**

- (b) A/E's technical staff, not including clerical staff or principals employed directly on the Project, shall be billed at 2.5 times Direct Personnel

Expense. Direct Personnel Expense shall be defined as direct salary cost of the technical personnel engaged on the project (actual hourly salary paid). In no case shall the total hourly compensation rate for technical staff exceed the rate for Principal's time.

### **10.2.2 Additional Services by Consultants**

For Additional Services of consultants approved by HISD, the reasonable and necessary actual cost to A/E of the additional service provided by the consultants.

### **10.3 Compensation for Reimbursable Expenses**

For Reimbursable Expenses approved in writing by HISD, the reasonable, necessary actual cost to the A/E of the items set out in Sections 9.3.2, 9.3.3, 9.3.4, 9.3.5, 9.3.6, 9.3.7 and 9.3.8.

## **ARTICLE 11 INSURANCE AND INDEMNIFICATION**

### **11.1 Basic Insurance Requirements**

The A/E shall carry insurance with responsible underwriters acceptable to HISD and with minimum limits of liability, as stated below, against claims for damages caused by bodily injury, including death, to employees and third parties, claims for property damage; and claims arising out of the performance of professional services caused by any of his own errors, omissions or negligent acts, or the errors, omissions or negligent acts of any person and/or consultant employed by him or by others for which he is legally liable. The A/E shall furnish certificates of insurance on state approved forms to HISD indicating compliance with this Section.

#### **Type of Coverage**

##### **Minimum Limits of Liability**

1. Worker's Compensation  
Statutory and Employer's Liability  
\$500,000 each accident
2. General Liability: Comprehensive, contractual, independent contractors, personal injury  
\$1,000,000 Combined Single Limit
3. Automobile Liability: comprehensive, owned, hired, non-owned  
Bodily Injury & Property Damage \$1,000,000 Combined Single Limit
4. Professional Liability:  
Errors and omissions  
Amount for Annual Claims Made with a two year extended reporting period, with a maximum deductible of \$25,000.00, not less than 10% of the Construction Budget set forth in Article 5 or \$2,000,000, whichever is greater. This limit may be satisfied using an excess professional liability policy by the written approval of HISD. No exclusionary provision or endorsement for structural engineering services will be permitted. No

exclusionary provision or endorsement for damages related to mold or other fungi or bio toxin shall be permitted.

### **11.2 Evidence of A/E Professional Liability Errors and Omissions Insurance**

The A/E shall submit evidence at the time of execution of this Agreement that it has in full force and effect professional liability errors and omissions insurance. The A/E shall maintain such insurance in full force and effect throughout the duration of this Agreement, and thereafter for a period of three years provided that such coverage is reasonably available at commercially affordable premiums. In the event that it becomes commercially infeasible to maintain it during the period required by this Agreement, A/E shall supply HISD with equivalent assurance to the required insurance acceptable to HISD.

### **11.3 Certificates of Insurance**

The A/E shall furnish evidence to HISD of insurance in the form of state approved certificates from insurance carriers acceptable to HISD. Upon request, A/E shall provide HISD copies of all policies and endorsements applicable to this Contract. Where possible, each policy shall be endorsed to provide that carrier will not cancel or significantly diminish coverage by endorsement without thirty days written notice to HISD. In the event there is a deductible on any policy, A/E shall furnish evidence that it is able to satisfy the deductible.

### **11.4 Additional Insured**

A/E shall add HISD as an additional insured to any and all policies of insurance purchased by A/E, using an endorsement form at least as broad as CG 2026 1185, excepting workers' compensation and professional liability, whether or not such policies of insurance are required under this Agreement.

### **11.5 Waiver of Subrogation**

All of A/E's policies shall state that they shall be primary and non-contributory to any and all HISD policies of insurance and shall be endorsed to waive subrogation, using an endorsement form at least as broad as CG 24 04 [Ed. 11-85].

### **11.6 Alternate Employer**

HISD shall be added as an "alternate employer" on A/E's workers' compensation insurance.

### **11.7 Meeting of Minimum Insurance Requirement**

Consultants to the A/E shall be required to show evidence of coverage of the types indicated above. The required minimum limits of liability of such coverage for consultants to the A/E shall be determined by the A/E and shall be subject to approval in writing by HISD, and shall be commensurate with the type and level of involvement and service of the consultants to the Project.

### **11.8 Indemnification**

**THE A/E SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS HISD AND EACH OF ITS RESPECTIVE PAST, PRESENT, AND FUTURE OFFICERS, TRUSTEES, DIRECTORS, AGENTS, BOARD MEMBERS, AND EMPLOYEES IN THEIR**

**INDIVIDUAL AND OFFICIAL CAPACITIES (“INDEMNIFIED PARTIES”), FROM AND AGAINST ALL CLAIMS, LOSSES, OR DAMAGES, INCLUDING ATTORNEY’S AND EXPERT’S FEES, COURT COST AND EXPENSES INCURRED BY INDEMNIFIED PARTIES, FOR INJURY, INCLUDING DEATH, TO PERSONS, OR DAMAGE TO OR DESTRUCTION OF PROPERTY, AND LAWSUITS, DEMANDS OR CAUSES OF ACTION OF WHATSOEVER KIND OR NATURE BASED UPON, RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH ANY NEGLIGENT ACT, ERROR, OMISSION, MISREPRESENTATION, OR MISCONDUCT BY A/E OR ITS EMPLOYEES, OFFICERS, SUBCONSULTANTS, OR AGENTS ARISING OUT OF OR IN CONNECTION WITH A/E’S PERFORMANCE OF THE AGREEMENT AND/OR ANY OF THE AE’S SERVICES AND/OR DESIGNS.**

**NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE INDEMNITY PROVISIONS INCLUDED HEREIN SHALL BE LIMITED SUCH THAT A/E SHALL NOT BE REQUIRED TO INDEMNIFY, HOLD HARMLESS OR DEFEND HISD OR ANY THIRD PARTIES AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE INDEMNIFIED PARTIES, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNIFIED PARTIES, OTHER THAN A/E OR ITS AGENTS, EMPLOYEES, OR SUBCONSULTANTS OF ANY TIER, EXCEPT THAT A/E SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTIES AGAINST ANY CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF SUB-CONSULTANT, ITS AGENTS, OR ITS SUB-CONSULTANTS OF ANY TIER.**

**All obligations as set forth in this Section 11.8 shall survive completion, termination, or abandonment of this Agreement.**

**It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation, such legal limitations are made a part of the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.**

**Nothing in this Agreement shall be construed to (i) create a claim or cause of action against HISD for which it is not otherwise liable; (ii) waive any immunity or defense to which HISD may be entitled; or (iii) create an impermissible deficiency debt of HISD.**

**ARTICLE 12  
A/E CERTIFICATION OF NON SEGREGATED FACILITIES**

### **12.1 A/E Certification of Non Segregated Facilities**

By the signing of this Agreement the A/E certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The undersigned agrees that a breach of this certification is a violation of the Equal Opportunity Clause. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he obtained identical certifications from proposed consultants for specific time periods) he will obtain identical certification from proposed consultants prior to the award of a contract exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed consultants (except where the proposed consultants have submitted identical certifications for specific time periods):

#### **Notice to Prospective Consultants of Requirement for Certification of Non-Segregated Facilities**

A certification of non-segregated facilities, as required by the May 9, 1967 Order (32 F.R. 7439, May 19, 1967) on elimination of segregated facilities, by the Secretary of Labor, must be submitted prior to the award of a contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each consultant contract or for all consultant contracts during a period (i.e., quarterly, semiannually, or annually.)

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

### **ARTICLE 13 OTHER CONDITIONS OF SERVICE**

#### **13.1 Project Description**

##### **13.1.1 Physical Description of Project**

Project Description:

Legal Description: Refer to the survey of each location prepared for the Project.

Phasing: The phasing plan shall be determined by HISD during Schematic Design.

The Project may proceed under one of the following phasing options at the discretion of HISD:

a. One-Phase:
---------------

	Students may attend classes off campus until completion of the Project.
b.	Two-Phase: Students may remain in existing classrooms until completion of entire new building; demolition of existing buildings and completion of play areas, parking and site work will proceed after students move into replacement school.
c.	On-site temporary campus: A transportable building campus may be set up on the school campus; the existing facility demolition is followed by new construction; the temporary campus is then removed and final site work completed.
d.	Multi-phase: Students may attend classes in portions of the existing building, new, or existing transportable buildings while portions of the new construction are built. Some parts of the replacement school are occupied while remaining construction proceeds, followed by removal of all transportable buildings, and completion of site work.

### 13.1.2 Design Standards

The Design Guidelines, Design Standards, Educational Facilities Specifications, and Preliminary Program of Requirements are contained in HISD Design and Construction Standards and all issued updates to these standards and any supplemental written instructions provided to the A/E by HISD and/or as made available on the HISD’s website.

The A/E shall develop all designs using Building Information Modeling (BIM). The A/E shall select BIM application(s) and software(s) and develop project designs using commonly accepted BIM software that is compatible with the latest International Alliance for Interoperability (IAI) Industry Foundation Class (IFC) standards. A/E shall use 3D graphic model(s) (the “Model”) and associated intelligent attribute data (“Facility Data”) created by this software to produce accurate project documents. The submitted Model shall be in a native file format, interactive for the user, and the model shall be capable of being converted to a standard platform or interoperable file format like IFCs.

### 13.1.3 Scope of Work

In addition to the scope of A/E’s Basic Services set forth in Article 2, the A/E’s Basic Services shall also include, and not be limited to, the following:

- .1 Design of the Project to obtain certification under the U. S. Green Building Council’s “Leadership in Energy and Environmental Design (LEED®) for Schools. It is the responsibility of the A/E to understand the requirements, register the project, design the project according to the LEED® standards, and take all necessary actions to obtain certification.
- .2 The A/E shall propose a strategy of LEED® credit points to pursue to obtain certification. HISD shall provide written approval of the strategy or provide to the A/E an alternate strategy, prior to the start of Design Development. The A/E shall pursue the credit points as approved by HISD.
- .3 The A/E shall coordinate activities for commissioning of the Project, in accordance with requirements of the applicable LEED® Reference Guide, with the services of an independent Commissioning Authority working under a separate agreement with

- HISD. The A/E shall comply with LEED® requirements for “Enhanced Commissioning” to begin commissioning early in the design process.
- .4 Energy modeling, daylight modeling, or other consulting services required to comply with requirements for approved credit points for LEED® certification
  - .5 Upon certification, the A/E shall submit evidence of certification to the City of Houston to obtain any qualifying rebate of costs under the LEED® Incentive Program Quick Start.
  - .6 Demolition or relocation of all permanent and transportable buildings, abandoned streets, and other improvements that are not a part of the design for the campus of the replacement school
  - .7 Analysis of HISD provided programming requirements
  - .8 Verification of scope of work to the established budget throughout the design process
  - .9 For projects involving renovation, the renovations at one or more campuses include, but shall not be limited to the scope of work defined in the Houston Independent School District’s current Facility Assessment documents provided to the A/E.
  - .10 The A/E’s Basic Services shall include, but not limited to, the following systems: site, structural, exterior enclosure, HVAC, plumbing, electrical systems, roofing, interior construction and other specialty items.
  - .11 Utility relocation and/or abandonment, new utility connections, and preparation of any street plan and profile documents required for permitting any portion of the Project
  - .12 Preparation of a site layout sketch of any transportable buildings required for the Project; preparation of drawings and obtaining approval of permits for all transportable buildings required for the Project; coordination of activities for completion of installation and later removal of one or more transportable buildings required for phasing the Project
  - .13 Verification of scope of work to the established budget throughout the design process
  - .14 Development of design solutions acceptable to HISD
  - .15 On-site and/or off-site, as may be applicable, flood control design and permit approval, including design of storm water detention facilities above or below grade
  - .16 Site development, grading, and pavement design
  - .17 Design of off-site development as required for obtaining a building permit for the Project, including accessible routes in the public way, sidewalks, street construction, street reconstruction, street modifications including addition of turn lanes, and/or utility relocations in the public right-of-way as required for the Project
  - .18 Structural foundations and framing
  - .19 Exterior building envelope
  - .20 Plumbing and fixtures
  - .21 Application to the City of Houston for water, sewer, and storm drainage availability letters
  - .22 Heating, ventilating and air-conditioning systems
  - .23 Electrical systems
  - .24 Incorporating all voice and data communications, CCTV, access control, and intrusion security systems design into A/E’s drawings (design requirements provided by HISD)
  - .25 Landscaping

- .26 Playground equipment site placement and access
- .27 Compliance with applicable codes in affect at time of design.
- .28 Accessibility design and compliance with Texas Accessibility Standards (TAS), including all accessibility consulting services for review of design to meet TAS.
- .29 Interior finishes and millwork design
- .30 Progress photography of the Project on a weekly basis during construction; before and after site photographs for verification of construction requirements
- .31 Completion of the HISD Standards Compliance Checklist form for each Design and Construction Documents Phase review
- .32 For all projects which include the use of a CMAR, as part of the Basic Services, A/E shall fully cooperate and coordinate with the CMAR throughout all phases of the Project and shall assist the CMAR with its obligations to provide recommendations on construction feasibility, availability of materials and labor (including actions designed to minimize adverse effects of labor shortages), time requirements for construction, and factors related to Project costs, including costs of alternative designs or materials, preliminary budgets, and possible economies of scale. A/E shall freely share all of its Project-related information with CMAR in relation to such cooperation and coordination.

### **13.2 Identification Badges**

A/E employees and consultant are required to provide, as part of this Agreement, identification badges, in a format provided by the PM, at any time when employees and consultants are visiting the project.

### **13.3 HISD's Bidding and Construction Options**

The A/E shall not be entitled to any additional compensation as a result of HISD requiring portions of the Project to be issued separately for bids and/or requiring separate bid packages to be issued on different dates. HISD may also combine projects under contract with different A/E's to a single construction contract. HISD shall determine the delivery method for the Project prior to start of the Design Development phase. The method may be any method permitted by, or a combination of these methods, as determined by HISD.

### 13.4 Anticipated Project Schedule

The schedule will be verified upon approval of the Schematic Design and phasing plans.

The following project milestones as referenced in Section 1.1.1 and Section 1.1.2 are as follows:

Task	Completed On Or Before
Begin design	After contract execution, as directed by HISD
Scope-to-Budget/Program Verification	3 weeks
100% Schematic Design	2 months or as negotiated with HISD
100% Design Development	2 months or as negotiated with HISD
60% Construction Documents	2 months or as negotiated with HISD
60% Cost review	2 weeks
100% Construction Documents	2 months or as negotiated with HISD
100% Cost review	2 weeks
Obtain permit; revise documents after permitting and HISD review; issue Bid Documents	2 months
Obtain pricing; negotiate and execute contract; issue Notice to Proceed	3 months
Substantial Completion / Obtain C-of-O	15 to 18 months or as required for project phasing
Complete punch list	2 months
Texas Department of Licensing and Regulations (TDLR) inspection, resolution of issues, and approval	2 month

**13.5 Project Management Software**

The A/E shall utilize HISD’s application of project management software as directed by HISD for various management tasks and communication throughout all phases of the Project. HISD will provide instructions and access to HISD’s management software at no cost to the A/E. HISD reserves the right to change the project management software.

This Agreement is executed in multiple originals this \_\_\_\_ day of \_\_\_\_\_, 2014.

Architect/Engineer:  
**{Company.Name}**

Owner:  
Houston Independent School District

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

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

\_\_\_\_\_  
Name

Terry B. Grier, Ed. D.                      Date  
Superintendent of Schools

\_\_\_\_\_  
Title

Approved as to Funding and Business  
Terms:

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

Kenneth Huewitt                              Date  
Chief Financial Officer

Approved as to Form:

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

Donald Boehm                                      Date  
Attorney, HISD

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

Robert Sands, Officer                              Date  
Construction & Facility Services

**A/E and Consultant E.E.O.C. Affidavit**

The State of Texas   §  
                                  §  
County of Harris     §

This firm, partnership, corporation, consultant agrees to refrain from discrimination in terms and conditions of employment on the basis of race, color, religion, sex, or national origin, and agrees to take affirmative action as required by federal statutes and rules and regulations issued pursuant thereto in order to maintain and ensure non-discriminatory employment practices.

**{Company.Name}**  
(Firm Name)

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

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

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

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

## **Statement of Jurisdiction**

“The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas.”

The Board’s current mailing address, telephone number and web site address are:

PO Box 12337  
Austin, TX 78711-2337  
Tel. (512) 305-9000  
[www.tbae.state.tx.us](http://www.tbae.state.tx.us)

