

CONTRACT FOR ARCHITECT/ENGINEER SERVICES
FOR
PROGRAM OF REQUIREMENTS SUPPORT
INNOVATIVE TECHNOLOGIES DEVELOPMENT COMPLEX
RELLIS CAMPUS
BRYAN, TEXAS

THIS CONTRACT made the 26th day of March, 2019, by and between the BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM, hereinafter called the "OWNER," and ENERGY ARCHITECTURE, INC., hereinafter called the "ARCHITECT/ENGINEER" OR "A/E";

WITNESSETH, that whereas the OWNER intends to prepare a Program of Requirements for the **Innovative Technologies Development Complex**, RELLIS Campus, Bryan, Texas, (the "Project");

NOW, THEREFORE, the OWNER and the A/E, for the considerations hereinafter named, agree as follows:

I

CONTRACT AMOUNT AND PAYMENTS

- 1.1 The OWNER agrees to pay the A/E, when this Contract is fully completed, an all inclusive negotiated fee of Thirty-Two Thousand dollars (\$32,000.00) to cover all costs and profits for performing the Scope of Work set forth in Attachment No. 1 to this Contract.
- 1.2 The fee to be paid to the A/E under this Contract will be paid upon completion and approval of the scope tasks set forth in Attachment No. 1 and in accordance with the following milestone schedule, subject to the provisions and modifications hereinafter stated:

Paid monthly as a percentage of completed work.
- 1.3 If the A/E incurs delay(s) in the completion of the work of a milestone (described in Paragraph 1.2 above) due to causes beyond the control of the A/E, the OWNER, at its sole discretion, may make partial payment(s) to the A/E for work performed to the time of the delay. The amount of the payment shall be in proportion to the percentage completion of the milestone work at the time of the delay as subjectively determined by the OWNER.
- 1.4 Under no circumstances shall the OWNER be obligated to make any payment (whether a progress payment or final payment) to the A/E if any one or more of the following conditions precedent exist:
 - 1.4.1 The A/E is in breach or default under this Contract.
 - 1.4.2 Any portion of a payment is for services that were not performed in accordance with this Contract provided; however, payment shall be made for those services which were performed in accordance with this Contract.

- 1.4.3 The A/E has failed to make payments that are properly due and owing to consultants or other third parties used in connection with services for which the OWNER has made payment to the A/E.
- 1.4.4 If the OWNER, in its good faith judgment, determines that the balance of the unpaid fees are not sufficient to complete the services in accordance with this Contract.
- 1.4.5 The A/E has failed to perform those services required to maintain the project schedule; provided that, barring any other claim by the OWNER, any withheld payments will be paid to the A/E at such time as the services are performed.

Notwithstanding any other provision of this Contract, the OWNER shall have the right to withhold from payments due the A/E such sums as the OWNER deems reasonably necessary to protect the OWNER against any loss or damage which may result from negligence by the A/E or failure of the A/E to perform the A/E's obligations under this Contract pending final resolution of such claims.

II

OBLIGATIONS, SERVICES AND DUTIES OF THE OWNER

- 2.1 The OWNER will furnish the A/E available information and documents in the OWNER'S possession and pertinent to the Project.
- 2.2 Owner Point of Contact:

Daniel McGuire, Project Manager IV
Office of Facilities Planning & Construction
The Texas A&M University System
301 Tarrow Street, 2nd Floor
College Station, Texas 77840-7896

III

OBLIGATIONS, SERVICES AND DUTIES OF THE A/E

The A/E agrees to perform professional services for the above named Project as follows:

- 3.1 A/E agrees and acknowledges that Owner is entering into this Agreement in reliance on A/E's represented professional abilities with respect to performing Architect/Engineer's services, duties, and obligations under this Agreement. Architect/Engineer agrees to use A/E's professional efforts, skill, judgment, and abilities in performing A/E's services. A/E shall perform its services diligently and shall endeavor to further the interest of the Owner in accordance with Owner's requirements and procedures. A/E shall perform its services in accordance with the professional skill and care ordinarily provided by competent architects and engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect and engineer (the "Standard of Care"). Subject to this Standard of Care, A/E shall interpret and apply applicable national, federal, state, municipal, and State of Texas building and accessibility laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction in effect at the time the services are provided. There

are no obligations, commitments, or impediments of any kind known to the A/E that will limit or prevent performance by A/E of its services. A/E hereby agrees to correct, at its own cost, any of its services, and the services of its consultants, that do not meet the standard of care.

- 3.2 Employ experienced architects, engineers, and a full team of necessary consultants, acceptable to the OWNER, and perform all professional services work set forth in Attachment No. 1, Scope of Work.
- 3.3 Assure that the makeup of the Program of Requirements support team, as composed in the qualifications submittal remains intact, except as requested by or approved by the OWNER; or if a member ceases employment, his replacement must be approved by the OWNER.
- 3.4 Perform the professional services for the above named Program of Requirements support work in accordance with Attachment No. 1, Scope of Work. These services may include assistance in obtaining all required OWNER and regulatory agency input, ~~obtaining and compiling all pertinent data~~, attending all meetings and conferences including recording notes ~~and preparing and distributing minutes~~, assist in developing a complete Program of Requirements in accordance with all applicable State and Federal regulations, codes, and requirements, assist in providing deliverables and preparing material as may be required for the A/E's presentation of the Program of Requirements to the OWNER and other groups as set forth in Attachment No. 1.
- 3.5 Grant the OWNER the right to use reproducible film positives, digital versions, and hard copies of all Program of Requirements documents prepared for this Project as the OWNER sees fit for purposes of the planning of future additions, alterations, and/or modifications to the **RELLIS Campus** facilities and such uses shall not be considered to be infringing upon any legal right the A/E may have in such works as established by the Copyright Act of 1976 (17 U.S.C., Section 101 et seq.) and shall only be used in accordance with current State Rules and Regulations of the Practice of Architecture and Engineering.
- 3.6 The OWNER may retain copies of documents, including digital copies, for information and reference in connection with the Program of Requirements. Because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the A/E reserves the right to retain the original tapes/disks.
- 3.7 Provide reports of fee payments to Historically Underutilized Business (HUB) firms as requested by OWNER.
- 3.8 A/E Point of Contact:

B. Todd Arenz, Associate Principal
2777 Allen Parkway, Suite 460,
Houston TX 77019
C- 832-524-5387
todda@energyarch.com

IV

CHANGES IN THE PROGRAM OF REQUIREMENTS

- 4.1 After approval of the Program of Requirements, if the A/E is caused extra drafting or other expenses due to significant scope changes ordered in writing by the OWNER and not the fault of the A/E, the A/E will be paid an equitable fee for such extra services and expenses. Additional payment to the A/E for accomplishing the changes will be in accordance with an agreed fee, approved in writing by the OWNER prior to performance of the service. Compensation will be based on hourly rates in accordance with the attached Labor Rate Schedule (Attachment No. 2), limited by the maximum specified in the contract change. The fee shall be consistent with the applicable payment terms in Paragraph 1.2 adjusted, as mutually agreed upon, for the services required.
- 4.2 If the A/E is caused extra drafting or other expenses due to his own errors and/or omissions, he will make such corrections without additional fee.

V

TERMINATION OF CONTRACT

- 5.1 This Contract may be terminated by either party upon seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination and such failure is not fully cured prior to the expiration of such seven (7) day period.
- 5.2 This Contract may be terminated at any time by the OWNER for its convenience upon at least fifteen (15) days' written notice to the A/E.
- 5.3 In the event of termination not the fault of the A/E, the A/E shall be compensated for all services satisfactorily performed to the termination date, together with approved Reimbursable Services/Expenses then due, provided A/E delivers to OWNER (i) statements, accounts, reports and other materials required for payment under this Contract and (ii) all reports, documents and other materials prepared by A/E prior to termination.

VI

SUCCESSORS AND ASSIGNMENT

The OWNER and the A/E each binds himself, his partners, successors, executors, administrators, and assigns to the other party of this Contract and to the partners, successors, executors, administrators, and assigns of such other party in respect to all covenants of this Contract. Neither the OWNER nor the A/E shall assign, sublet or transfer their interest in this Contract without written consent of the other.

VII

INSURANCE COVERAGE

The A/E shall obtain and maintain, for the duration of this Contract or longer as stated in subparagraph D below, the minimum insurance coverages set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to Owner. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to the Architect/Engineer under this Contract. The A/E shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The A/E is not relieved of any liability or other obligations assumed pursuant to this Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to Owner at least ten days before the effective date of the cancellation.

Coverages	Limit
A. Worker's Compensation	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident \$1,000,000 Disease/Employee \$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for [Member]. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

B. Automobile Liability	
Owned Vehicles	\$1,000,000
Non-owned Vehicles	\$1,000,000
Hired Vehicles	\$1,000,000

Business auto liability insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for bodily injury and property damage.

Option: If a separate business auto liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the commercial general liability policy

C. Commercial General Liability	
Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000
Premises and Operations	\$1,000,000
Personal/Advertising Injury	\$1,000,000
Products/Completed	\$1,000,000
Damage to rented Premises	\$ 300,000

D. Professional Liability (E&O)

E. The A/E shall include The Texas A&M University System Board of Regents, The Texas A&M University System and RELLIS Campus as additional insured on the Commercial General Liability and Automobile Liability policies, and the Workers' Compensation policy shall include a waiver of subrogation in favor of the Owner.

DISPUTE RESOLUTION

- 6

- 8.3 Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the A/E, in whole or in part.
- 8.4 The designated individual responsible on behalf of The Texas A&M University System for examining any claim or counterclaim and conducting any negotiations related thereto as required under §2260.052 of the Government Code shall be the Chairman of the Committee on Buildings and Physical Plant, Board of Regents, The Texas A&M University System.
- 8.5 The OWNER shall have the right to pursue any and all remedies available to it at law or in equity if A/E fails to perform the services with reasonable care and competence or fails to apply the technical knowledge and skill which is ordinarily applied by reasonably prudent architects or engineers practicing under similar circumstances and conditions. The A/E shall hold harmless and indemnify the OWNER from any liability arising out of negligent acts, errors, or omissions of the A/E in the performance of its professional services under this Contract.

IX

GENERAL CONDITIONS

- 9.1 **Texas Law to Apply:** This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Brazos County, Texas. Venue shall be in Brazos County, Texas.
- 9.2 **Parties Bound:** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Contract.
- 9.3 **Severability:** In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 9.4 **Prior Agreements Superseded:** This Contract constitutes the sole and only agreement of the parties hereto with respect to the subject matter of this Contract and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.
- 9.5 It is the policy of the State of Texas, the Texas Procurement and Support Services and the A&M System to encourage the use of Historically Underutilized Businesses (HUBs) in our prime contracts, subcontractors and purchasing transactions. The goal of the HUB program is to promote equal access and equal opportunity in A&M System contracting and purchasing.

The Architect/Engineer agrees on allocating work to subcontractors (consultants) as listed (or indicated) on their HUB Subcontracting Plan, in accordance with The A&M System Policy on Historically Underutilized Businesses. No changes to the HUB Subcontracting Plan may be made unless approved in writing by the Owner. While this Contract is in effect and until the expiration of one year after completion, the Owner may require information from the Architect/Engineer, and may conduct audits, to assure that the HUB Subcontracting Plan is followed.

- 9.6 **Public Information.** Architect/Engineer acknowledges that Owner is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

Upon Owner's written request, Architect/Engineer will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, *Texas Government Code*, to Owner in a non-proprietary format acceptable to Owner. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which Owner has a right of access.

Architect/Engineer acknowledges that Owner may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

- 9.7 The OWNER and the A/E hereby agree to the full performance of the covenants contained herein.

9.8 **CERTIFICATIONS:**

By agreeing to and signing this Contract, the A/E hereby makes the following certifications and warranties:

- 9.8.1 **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Family Code requires the following statement: "Under Section 231.006, *Family Code*, the vendor or applicant certifies that the individual or business entity named in this Contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate."
- 9.8.2 **Prohibited Bids and Contracts.** A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The Government Code requires the following statement: "Under Section 2155.004, *Government Code*, the vendor certifies that the individual or business entity named in this bid or Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate."
- 9.8.3 **Previous Employment.** The A/E acknowledges and understands that Section 2252.901 of the Texas Government Code prohibits a state agency from using state appropriated funds to enter into any employment, professional services or consulting services agreement

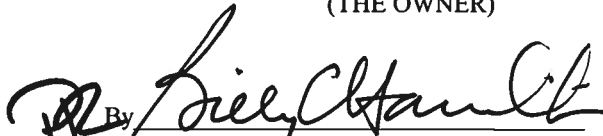
with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If the A/E is an individual, by signing this Contract, the A/E certifies that Section 2252.901 (as amended) of the Texas Government Code does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

- 9.8.4 Franchise or Margin Tax. If the A/E is subject to the Texas franchise tax, the A/E certifies that, upon the effective date of this Contract, it is either exempt from the obligation to pay franchise taxes or is not delinquent in the payment of franchise taxes. The A/E agrees that any false statement with respect to franchise tax status shall be a material breach hereof, and OWNER shall be entitled to terminate this Contract upon written notice thereof to the A/E.
- 9.8.5 Debt to State. Pursuant to Sections 2107.008 and 2252.903 of the Texas Government Code, the A/E acknowledges and agrees that, to the extent the A/E owes any debt or delinquent taxes to the State of Texas, any payments the A/E are owed under this Contract may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes the A/E owes the State of Texas until the debt or delinquent taxes are paid in full.
- 9.8.6 Certification regarding Boycotting Israel. Architect/Engineer acknowledges that Owner is obligated to comply with Chapter 2270, *Texas Government Code*. By executing this Agreement, Architect/Engineer certifies it does not and will not, during the performance of this Agreement, boycott Israel. Architect/Engineer acknowledges this Agreement may be terminated if this certification is inaccurate.
- 9.8.7 Certification regarding Business with Certain Countries and Organizations. Architect/Engineer acknowledges that Owner is obligated to comply with Subchapter F, Chapter 2252, *Texas Government Code*. By executing this Agreement, Architect/Engineer certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Architect/Engineer acknowledges this Agreement may be terminated if this certification is inaccurate.

[SIGNATURES PROVIDED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement effective
as of the day and year first written above.

BOARD OF REGENTS OF
THE TEXAS A&M UNIVERSITY SYSTEM
(THE OWNER)

By 
Deputy Chancellor and Chief Financial Officer

Date 3/26/19

ENERGY ARCHITECTURE, INC.
(THE ARCHITECT/ENGINEER)

By 
(Signature)

B. Todd Arhiz
(Print or Type Name)

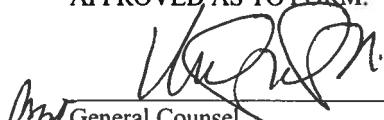
Date 3.18.2019

APPROVAL RECOMMENDED:


Executive Director
Office of Facilities Planning & Construction

Date 03.25.2019.

APPROVED AS TO FORM:


General Counsel

Date 3/21/2019

The Texas Board of Architectural Examiners, PO
Box 12337, Austin, Texas 78711 or 333
Guadalupe, Suite 2-350, Austin, Texas 78711,
telephone (512) 305-9000, has jurisdiction over
complaints regarding individuals licensed under
Chapter 1051, Texas Occupations Code.

Name(s) of individual(s), sole proprietors,
partner(s), shareholder(s) or owner(s) with an
ownership interest of at least 25% of the business
entity executing this Contract.

Name: _____

Name: _____

Name: _____

Name: _____

**CONTRACT FOR ARCHITECT/ENGINEER SERVICES
ATTACHMENT NO. 1
SCOPE OF WORK
INNOVATIVE TECHNOLOGIES DEVELOPMENT COMPLEX
PROGRAM OF REQUIREMENTS SUPPORT**

Assist in the Preparation a Program of Requirements for the INNOVATIVE TECHNOLOGIES DEVELOPMENT COMPLEX facilities for RELLIS Campus. The Basic Services to be provided in this Program of Requirements preparation include the following tasks.

Work Task 1 –

- Assisting TEES with programming effort for the above referenced building
- Attending weekly meetings for approximately 7 weeks
- Includes 7 trips for Todd Arenz
- Includes 2 trips for Jim Ray
- Assist TEES in developing programming questions for User Group
- Support TEES by providing space stacking diagrams
- Support TEES by providing space adjacency diagrams
- Support TEES by providing site maps and diagrams
- Support TEES by writing the Site Narrative including availability and locations of utilities
- Support TEES by coordinating and providing MEP Narratives
- Support TEES by coordinating and providing a Structural and Civil Narratives
- This proposal assumes that TEES will be taking the lead on the programming effort and Energy Architecture will participate in programming meetings and provide support. We assume that TEES will be taking care of the following: writing the Project History, writing the Project Justification, the Lifecycle Narrative, the Narrative describing Key Aspects of the Project, Narrative describing Main Barriers to the project, developing the Occupancy Break Down sheets, writing the Narrative describing the Special Requirements for rooms (Energy to provide supporting diagrams), producing Room by Room Needs Write Ups, Coordinate the pricing estimates with a general contractor. TEES will take the lead in coordinating collecting information and assembling the POR document.

Work Task 2 –

Architectural Scope

Programming Support During Programming, EA will meet with TEES and the User Coordinator to determine design criteria, confirm area and clear height requirements, collect pertinent information for use areas and equipment, and any provisions for future expansions. The Programming scope includes assisting TEES in developing a detailed program of requirements with tasks as described above. Our fee includes travel to meetings in College Station as described above. Additional trips can be added for \$1,200 per trip. Energy will assist by reviewing for adhearance to the RELLIS Campus Master Plan.

Civil- Structural Scope

Civil Engineering input will be provided by Gessner Engineering. This includes 5 preliminary geotechnical boring for preliminary data on existing subsurface conditions. Gessner Engineering will include recommendation/descriptions of foundation systems and superstructure systems.

Pricing Scope

By TEES and their choice of general contractor or pricing consultant. Energy will assist by reviewing costs per previous RELLIS projects.

MEP Scope

MEP system descriptions will be provided by Shah Smith and Associates will include descriptions for HVAC design, building management systems (BMS), plumbing systems including domestic water, hot water, gas, compressed air, lab gases and waste, fire alarm and detection systems. Scope will include descriptions of electrical power systems including main service, normal and emergency power distribution, generator information.

Schedule

Programming: Approximately 7 weeks

**CONTRACT FOR ARCHITECT/ENGINEER SERVICES
ATTACHMENT NO. 2
PERSONNEL TITLES AND HOURLY RATES**

Firm/Position Classification

Hourly Billing Rate

Architecture –

Principal	\$ 225
Senior Project Manager	\$ 200
Project Manager	\$ 175
Senior Project Architect	\$ 140
Laboratory Planner	\$ 125
Project Architect	\$ 115
Intern	\$ 90
Administrative Staff	\$ 65