

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** Hugh R. Riley, Assistant City Manager 

**BY:** Ky Spangler, Special Projects Consultant 

**DATE:** May 5, 2011 (CC Meeting of 5/18/11)

**SUBJECT:** Consider Amendment No. 5 to Architectural Agreement with HMC Architects (HMC) for Design Revisions for the Ventura County Health Services Center for Ruben Castro Human Services Center

**BACKGROUND & DISCUSSION**

HMC was awarded the full design contract for the Ruben Castro Human Services Center (RCHSC) in 2006. As the design process has progressed, amendments to the contract have been necessary to provide for additional design services, tenant improvement plans and the addition of an emergency generator for the facility. During the refinement of the Construction Drawings, a number of changes have been requested by the Ventura County Health Care Agency (Agency).

The County of Ventura (County) is purchasing Building A at the RCHSC which will be utilized by the Agency as a medical services facility. The County will be paying 100% of the costs associated with these changes as a part of the final purchase price and construction of the building.

The Agency has been highly involved throughout the entire design process. Following the completion of the Construction Drawings developed pursuant to the Agency's input, direction and requests, the Agency's subsequent review has generated a number of additional changes requiring extensive revisions to the building plans. HMC and their subconsultants have absorbed much of the cost associated with these changes; however, based on the number of changes and man hours required to revise the drawings, HMC has requested an amendment to the Agreement to cover a portion of these costs.

The following figure illustrates the additional fee proposal:

<b>Total current contract through Amendment No. 4</b>	<b>\$1,360,793</b>
Revisions to Ventura County Health Services Center	\$17,650
Reimbursables	<u>\$5,000</u>
<b>Total New Contract Amount</b>	<b>\$1,383,443</b>

**FISCAL IMPACT**

There are sufficient funds in the project budget (5020) to pay for this increase. The County will pay for 100% of these additional costs as part of the purchase price for the Medical Clinic.

**STAFF RECOMMENDATION**

Approve Amendment No. 5 to the professional services agreement with HMC Architects to increase the amount of the agreement by \$17,650 for design revisions (plus \$5,000 for reimbursable expenses) from \$1,360,793 to \$1,383,443 and authorize the City Manager to execute said amendment, subject to final language approval by the City Manager and City Attorney.

Attachment 1 – Amendment No. 5

ATTACHMENT 1

**FIFTH AMENDMENT TO AGREEMENT 2006-029  
FOR ARCHITECTURAL DESIGN AND CONSULTING SERVICES**

**THIS FIFTH AMENDMENT TO THE AGREEMENT FOR SERVICES (“Fifth Amendment”)**, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, (“the Effective Date”) between the City of Moorpark, a municipal corporation, hereinafter referred to as “CITY”, and HMC Architects, a California corporation, hereinafter referred to as “CONSULTANT”.

**WITNESSETH:**

**WHEREAS**, March 21, 2006, the CITY and the CONSULTANT entered into an Agreement for architectural design and consulting services for the Ruben Castro Human Services Center; and

**WHEREAS**, December 29, 2009, the CITY and the CONSULTANT entered into a First Amendment for additional design fees to reflect increases in construction costs since the original Agreement was signed; and

**WHEREAS**, February 16, 2010, the CITY and the CONSULTANT entered into a Second Amendment for additional design fees for Clinicas tenant improvements and landscape changes; and

**WHEREAS**, August 10, 2010, the CITY and the CONSULTANT entered into a Third Amendment to delete certain unnecessary design fees and add additional fees to reflect additional changes that were made to the project; and

**WHEREAS**, February 25, 2011, the CITY and the CONSULTANT entered into a Fourth Amendment to provide an allowance for reimbursable expenses; and

**WHEREAS**, the CITY wishes to amend the Agreement to include additional design fees for changes requested by the Ventura County Health Care Agency to the Health Services Building that will be purchased by the County of Ventura.

**NOW, THEREFORE**, in consideration of the mutual covenants, benefits, and premises herein stated, the parties hereto AMEND the aforesaid Agreement follows:

**I. Section 3 of the Agreement is amended to include:**

**3. CITY OBLIGATIONS**

CITY hereby increases the maximum payable under this Agreement by \$17,625 for design changes to the Ventura County Health Services building in accordance with Exhibit "A". Additionally, Agreement amount is amended to include up to \$5,000 for reimbursable expenses associated with the design changes. The new maximum contract amount is \$1,383,443.

**II. Section 4 of the Agreement is amended to include:**

**4. ARCHITECT'S OBLIGATIONS**

CONSULTANT will incorporate design revisions to the Ventura County Medical Center Building in accordance with Exhibit "A" dated April 21, 2011, attached.

**III. Remaining Provisions**

All other terms and conditions of the original Agreement shall remain in full force and effect.

CITY OF MOORPARK

HMC ARCHITECTS

By: \_\_\_\_\_  
Steven Kueny  
City Manager

By: \_\_\_\_\_  
Chris R. Taylor  
Executive Vice President

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

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

ATTEST:

\_\_\_\_\_  
Maureen Benson, City Clerk

Exhibit A – Consultant's letter proposal dated April 21, 2011

## EXHIBIT A

April 21, 2011

Hugh Riley  
Assistant City Manager  
799 Moorpark Avenue  
Moorpark, CA 93021

Re: Proposal for Additional Architectural/Engineering Services 4  
Building A - Ventura County Medical Center (Plan Modifications)  
HMC #2307002-103



Dear Mr. Riley:

HMC Architects is pleased to submit the following Proposal / Agreement to provide Architectural, Mechanical, Electrical & Plumbing Engineering and Structural Engineering, for the above-mentioned project.

### Scope of Work for Basic Services:

The proposal includes updating the Architectural Contract Documents per the Ventura County Health Services changes on the marked up Space Plan (Attachment "A1", "A2" & "A3") for approval by the City of Moorpark and applicable agencies. HMC shall provide updated Construction Documents for Construction purposes to modify the drawings to include the following: Millwork relocation, toilet re-configuration, modifying the Radiology room size and detailing for the additional support/bracing required per the radiology equipment specifications. This additional fee only affect the Construction Documents as the base contract currently incorporates the Construction Administration phase with the services to be performed concurrently during the previously contracted bidding & construction phases; No additional fee applies for any other phases.

### City of Moorpark-Ruben Castro – HMC #2307002-103

Revise Design Documentation for Contractor Pricing and Construction.

- Modify existing design and provide revised Construction Documents for the following:
  - Exam Rooms-
    - Relocate millwork and plumbing layout per plan.
    - Modify Millwork at Sink area per comments
    - Add locks to all Millwork doors.
    - Revise drawers per comments.
  - Pantry-
    - Revise Equipment & Millwork
  - Radiology Room-
    - Modify Room layout as required by Radiology Specifications
    - Provide additional bracing for Radiology equipment
    - Provide additional HVAC requirements for Radiology Equipment.
  - Medicine Room-
    - Provide additional HVAC for Freezer Equipment
    - Provide Card readers at room door (for security).

Hugh Riley  
City of Moorpark  
April 19, 2010  
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**Compensation:**

Fee for the scope of work listed above shall be a fixed fee of Seventeen Thousand Six Hundred and Twenty Five Dollars (\$17,625.00) as follows:

Schematic Design (10%)	\$ 1,762.50
Design Development (30%)	\$ 5,287.50
Construction Documents (60%)	\$ 10,575.00
*Agency & Bidding (0%) *Included in Base Fee	\$ 0.00
*Construction Administration (0%) *Included in Base Fee	\$ 0.00

**Architectural / Engineering Fixed Fee: \$ 17,625.00**

**Consultants:**

**Structural (TMAD Taylor & Gaines)**

Design & Detail support for Radiology equipment (5) Pieces needing individual bracing

**Mechanical/Electrical/Plumbing (Davidovich & Associates)**

Modify Design & Details per plumbing/toilet reconfiguration & HVAC impacts from Radiology equipment room and specifications

**Radiology Report (Jimmy Zhou)**

Provide Physicists report noting Lead Shielding Requirements

**Exclusions/Assumptions:**

1. Services listed above exclude Audio/Visual design & detailing, detailed acoustic study and/or recommendations, civil engineering, or signage/graphic design.
2. Additional exclusions include the following: Architectural Models and/or Additional Computer Renderings, Plan Check fees, Existing equipment verification and major modifications to the exterior building envelope not associated with the Tenant Improvement project and scope. It is assumed that the Furniture, Fixtures and Equipment will be purchased through Vendor and Dealer relationships presently established. This proposal does not include detailed review by HMC of multiple bids/substitutions by Vendors and Dealers other than what are stated in the Scope of Work. Additional Furniture revisions, revised selections and/or meetings above and beyond the itemized scope will be billed on an hourly basis per the attached hourly rate schedule, Attachment "C".
3. This Proposal / Agreement excludes all other Design/Construction projects as well as design coordination with other Designers/Architects, Consultants, or Vendors engaged by City of Moorpark for portions of the Project not described herein.

4. This Proposal excludes additional Staffing increases due to delayed Project approvals, extension of Project or Construction schedule beyond the current construction duration and/or additional on-site presence during Construction are to be billed at the weekly rate per Attachment "C".

**Additional Services:**

If Additional Services are required beyond the original Scope of Work and Compensation outlined below (for example such services as described by Attachment "B"), HMC will bill on an hourly basis per the hourly rate schedule, Attachment "C", but only upon written approval of Additional Services prior to commencement of Additional Services.

**Reimbursable Expenses:**

Reimbursable expenses are in addition to compensation for Basic and Owner approved Additional Services, including printing, plotting, delivery and other expenses related to Agency review, including the submittal of electronic files, Bidding, Construction or other Owner requested costs. Reimbursable expenses include expense of transportation (including mileage) in connection with the Project, expenses in connection with authorized out-of-town travel, including travel time, and fees paid for securing approval of authorities having jurisdiction over the Project. The Architect's compensation shall be computed based on 1.15 times the amount invoiced to the Architect. Reimbursable allowance preliminarily estimated not-to-exceed Five Thousand Dollars (\$5000.00).

**Other Terms and Conditions of This Proposal / Agreement:**

Reference Attachment "D" of this Proposal / Agreement.

**Authorization/Agreement to Proceed:**

HMC ARCHITECTS is hereby requested and authorized by City of Moorpark to provide Architectural / Engineering Services as described above. All the foregoing is agreed to and authorized by:

**HMC Architect:**

**City of Moorpark:**

\_\_\_\_\_  
Chris R. Taylor, AIA  
Executive Vice President  
License #C-19759

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Hugh Riley  
City of Moorpark  
April 19, 2010  
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Please review this Proposal / Agreement and if it meets with your approval, please sign and return one (1) original to my attention. Should you have any questions regarding this Proposal / Agreement or need any additional information please call me at (213) 542-8300.

Sincerely,



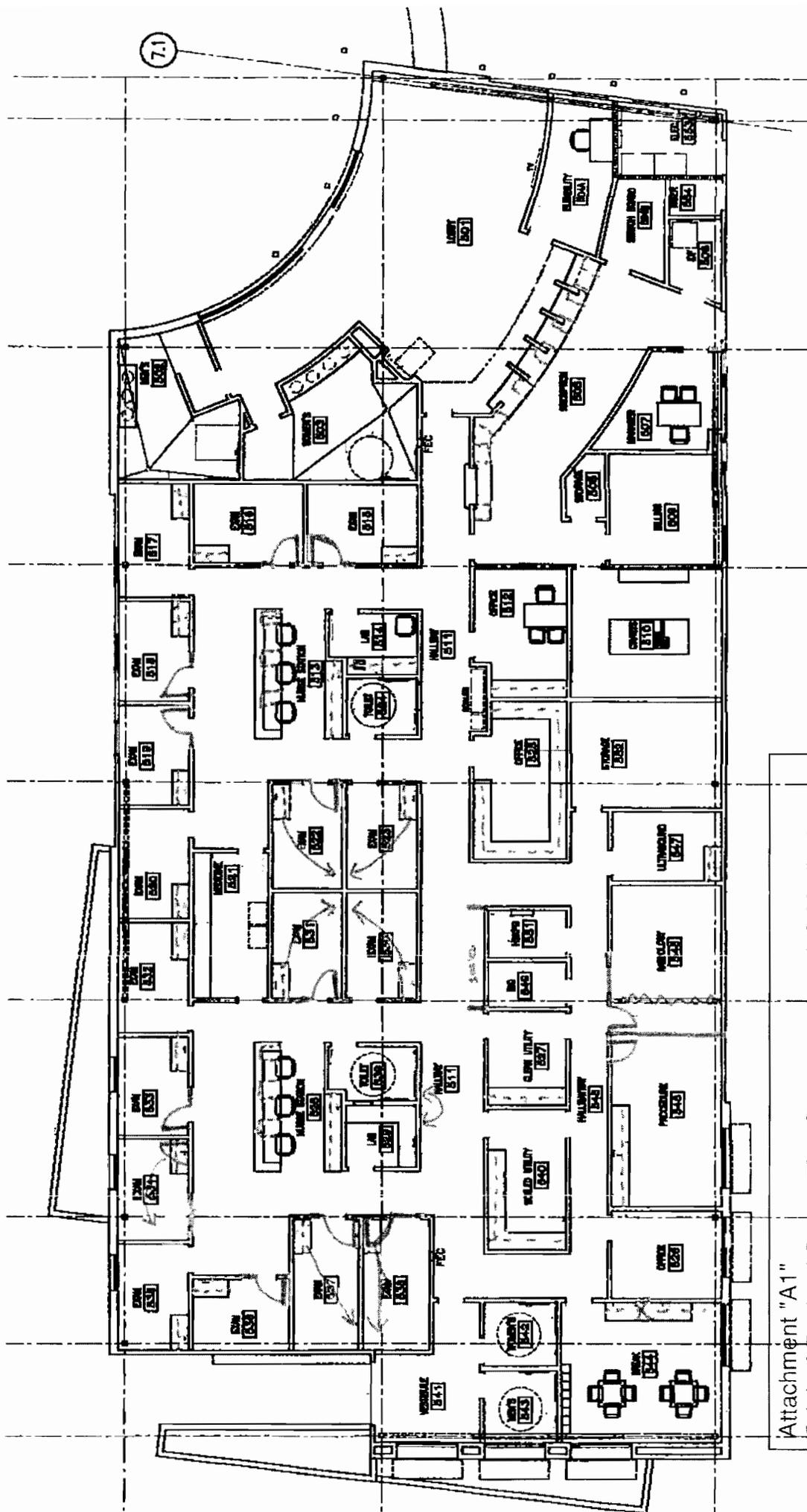
Jeremy Duval  
Senior Project Designer

JW:le

cc: L. Eloff, J. Duval, File-CN-AOA

Enclosures:

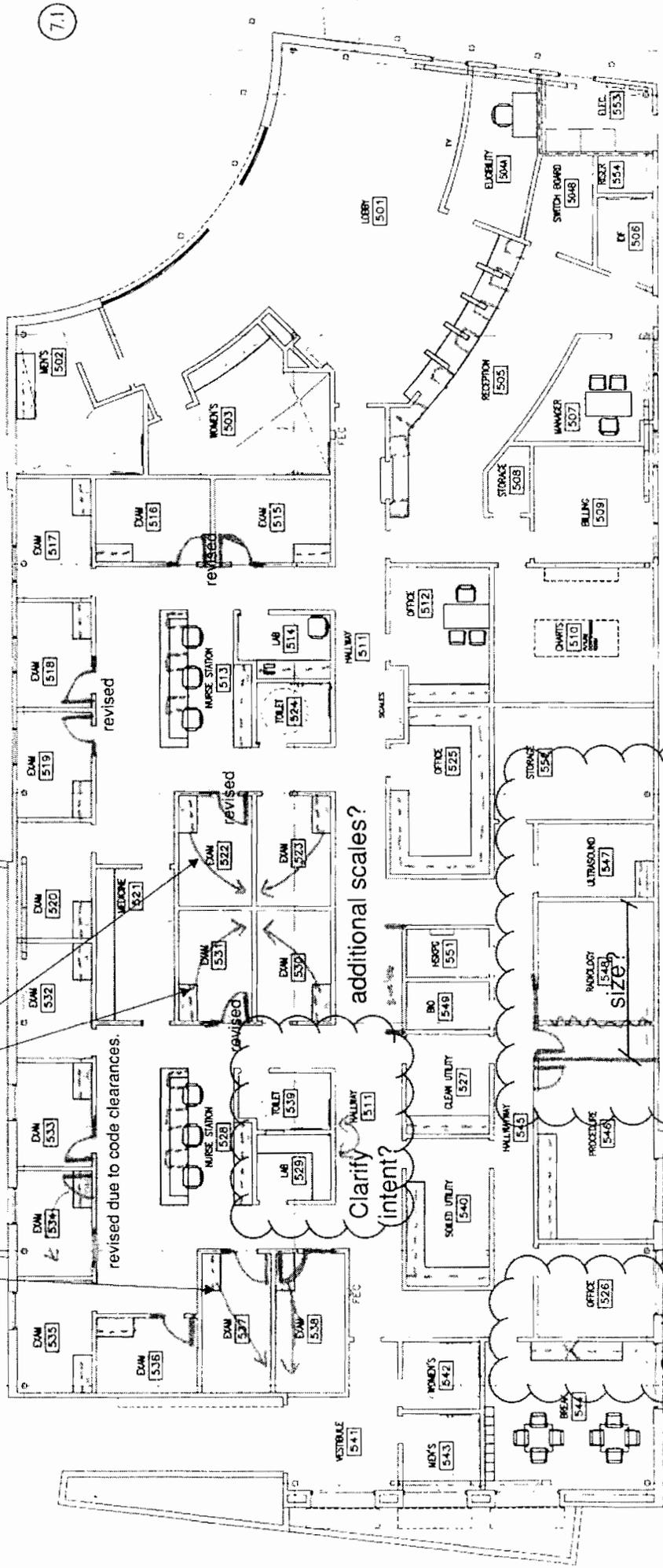
Attachment "A1"	Original Revised Space Plan comments from VC Medical (Received 11/0410)
Attachment "A2"	Revised Space Plan Comments from VC Medical (HMC Comments)
Attachment "A3"	Space Plan Notes Comments from HMC incorporating additional changes
Attachment "B"	Additional Services [HMC]
Attachment "C"	Rate Schedule [HMC]
Attachment "D"	Other Terms and Conditions [HMC]



Attachment "A1"  
 Original Revised Space Plan Comments from VC Medical  
 Received 11/04/10

**VC Medical-**

Please confirm that you want to relocate the millwork in these rooms as the intent was to keep a large area clear for Med equipment. Possible Add Service for changes.



7.1

additional scales?  
Clarify intent?

Clarify intent?

Size increase?  
by Radiology vendor?  
provide size required to  
increase room?

Attachment "A2"  
Revised Space Plan Comments from VC Medical (HMC comments added for clarification)  
Sent 11/08/10

**INDEX**

- Ⓛ Door lock (Lockset)
- ⓄⓇ Card Reader/Proxy Reader

**GENERAL**

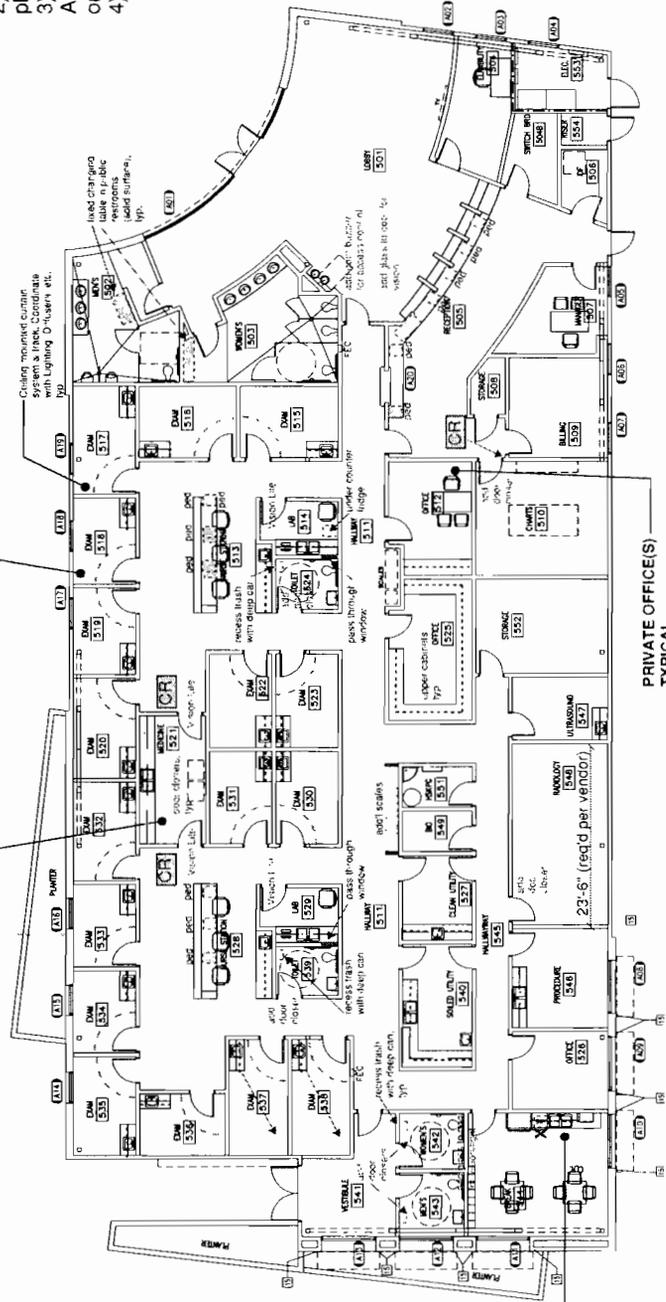
- 1) Add milwork Locks to ALL cabinets (Uppers/under counter cabinets and at nurses' stations)
- 2) Provide Stainless Steel covers over plumbing. Omit plastic sleeve type.
- 3) Provide removable milwork "apron" at ALL sinks. NO Doors over the sink area only.
- 4) NO Eyewash

**EXAM ROOMS TYPICAL**

- Casework with Sink
- Open Area below sink (no doors) with casework apron
- (1) Exam Table
- Guest chairs-Oly?
- (1) Stool
- ceiling mounted privacy curtain
- Sensor faucet (Foot pedals NOT ADA)
- Wall mounted Soap Dispenser

**MEDICINE ROOM TYPICAL**

- Casework with Sink
- Open Area below sink (no doors) with casework apron
- Wall mounted Soap Dispenser
- Refrigerator (Full size)
- Freezer (Half Size)
- Electrical monitoring for Medicine
- Card Reader/Vision Lite (both doors)



- BREAK ROOM**
- 1 Refrigerator (counter top)
  - NO Dishwasher
  - Microwaves (counter top)
  - Sink/Faucet
  - Garbage Disposal (counter top) with separate water line

Attachment "A3"  
 Space Plan Notes Comments from HMC incorporating additional changes  
 Sent: 02/15/10

## ATTACHMENT "B"

### ADDITIONAL SERVICES

The Additional Services described in this Attachment are not included in Basic Services and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services, Additional Services may only be provided if authorized or confirmed in writing by the Owner and Architect.

#### Project Representation Beyond Basic Services:

1. **Revisions:** Making revisions in Drawings, Specifications, Project Manual or other documents when such revisions are:
  - a. Inconsistent with approvals or instructions previously given by the Owner;
  - b. Required by the enactment, revised interpretation, jurisdictional differences in interpretation, or revision of codes, laws or regulations subsequent to the preparation of such documents, or additional costs caused by delays resulting from such.
2. **Project Changes:** Providing services required because of changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction.
3. **Change Orders:** Preparing Drawings, Specifications and other documentation, analysis and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and directives.
4. **Default:** Providing services made necessary by the default or termination of the Contractor, by defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner, Contractor or others performing services or providing work on the Project.
5. **Contractor's Submittals:** Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect.
6. **Contractor's RFI:** Responding to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.
7. **Claims:** Providing services in connection with claims submitted by Contractor or others.
8. **Hearings, Proceedings:** Providing services in connection with the preparation for, or attendance at, public hearings or other meetings, or legal proceedings, except where the Architect is a party thereto.

#### Contingent Additional Services

1. **Existing or Other Facilities:** Providing services to investigate facilities or existing conditions or to make measured drawings thereof.
2. **Detailed Estimates:** Providing detailed estimates of Construction Cost.
3. **Providing Other Consultants:** Providing services of consultants, if any other than those specified as Basic Services under this Agreement.
4. **Post Completion/Extended Construction:** Providing services after the original completion date not due to the fault of the Architect/Engineer or after issuance to the Owner of the final Certificate for Payment, or thirty (30) days after the date of Substantial Completion of the Work, whichever is earlier.
5. **Project Hold/Resumption:** If the Project is placed on hold by the Owner for more than 90 days due to circumstances beyond the direct control of the Architect, the schedule shall be adjusted and the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.
6. **Other Additional Services:** Providing any other services not otherwise included in this Agreement.

**ATTACHMENT "C"**

**HMC RATE SCHEDULE**

**Standard Hourly Rate Schedule by Professional Category**

(Not all categories need apply to this contract)

	Hourly Rates
Principal In Charge	\$ 235.00
Managing Principal	\$ 235.00
Senior Project Manager/Senior Project Architect	\$ 190.00
Project Director	\$ 190.00
Senior Technical Manager	\$ 190.00
Project Manager/Project Architect	\$ 170.00
Technical Manager	\$ 170.00
Technical Leader	\$ 140.00
Project Leader	\$ 140.00
Project Coordinator	\$ 125.00
Intermediate Drafter	\$ 110.00
Drafter	\$ 100.00
Agency Compliance Manager	\$ 125.00
Agency Compliance Coordinator	\$ 90.00
Senior Construction Administrator	\$ 200.00
Construction Administrator	\$ 130.00
Construction Administration Support	\$ 80.00
Managing Senior Estimator	\$ 200.00
Senior Estimator	\$ 180.00
Estimator	\$ 150.00
Senior Specifications Writer	\$ 190.00
Specifications Writer	\$ 170.00
Specifications Technician	\$ 140.00
Specifications Coordinator	\$ 125.00
Principal In Charge (HC)	\$ 300.00
Managing Principal (HC)	\$ 300.00
Sr. Vice President of Healthcare	\$ 300.00
Senior Healthcare Planner I	\$ 300.00
Sr. Vice President of Research & Design	\$ 275.00
Senior Healthcare Planner II	\$ 190.00
Healthcare Planner	\$ 185.00

	Hourly Rates
Design Director	\$ 235.00
Sr. Project Designer	\$ 170.00
Project Designer	\$ 150.00
Design Leader	\$ 125.00
Designer II	\$ 115.00
Designer/Student Intern	\$ 90.00
Director of Interior Design	\$ 235.00
Senior Interior Project Designer	\$ 165.00
Senior Interior Designer	\$ 165.00
Interior Designer Leader	\$ 140.00
Interior Designer	\$ 125.00
Interior Designer Coordinator	\$ 90.00
Senior Sustainable Design Manager	\$ 190.00
Sustainable Design Manager	\$ 170.00
Sustainable Design Leader	\$ 140.00
Sustainable Design Coordinator	\$ 125.00
Senior Education Facilities Planner I	\$ 235.00
Senior Education Facilities Planner II	\$ 175.00
Education Facilities Planner	\$ 150.00
Education Facilities Planning Coordinator	\$ 100.00
Education Facilities Planning Leader	\$ 90.00
Labor Compliance	\$ 140.00
Architectural Model Builder	\$ 135.00
Visualization Arts Coordinator	\$ 110.00
Finisher/Photographer	\$ 105.00
Graphics Designer	\$ 100.00
Computer Services	\$ 100.00
Contract Administrator	\$ 80.00
Admin Support	\$ 75.00

These are the current hourly rates effective March 1, 2010 through February 28, 2011 and are subject to change one time annually effective March 1st

## ATTACHMENT "D"

### OTHER TERMS AND CONDITIONS

#### Retainer

An initial payment of zero (-0-) shall be made upon execution of this Agreement and credited to the fee earned at final payment.

#### Invoicing

The Architect shall invoice its time and reimbursable expenses monthly, and invoices are due and payable upon receipt. Amounts unpaid thirty (30) days after the receipt of the invoice will be subject to a service charge of eighteen percent (18%) per annum, pursuant to Civil Code §3320. Should the Owner fail to pay current invoices for more than sixty (60) days, the Architect may stop work on the Project until payment is received or terminate this Agreement with the Owner. The Architect shall not be held liable for any damages or losses that may result from such suspension or termination of services according to the provisions set forth in this proposal.

The Owner agrees to return disputed invoices within fifteen (15) days of that invoice with a clear description of the nature of the dispute.

#### Legal Costs

In the event that legal proceedings between the parties are necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of its litigation costs and expenses, including reasonable attorney's fees.

#### Project Suspension/Resumption

If the Project is suspended by the Owner for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services. If the project is suspended by the Owner for more than ninety (90) consecutive days, the Architect may terminate the Agreement, by giving not less than seven (7) days written notice.

#### Termination

Either the Owner or Architect may, for any reason, terminate this Agreement upon not less than seven (7) days written notice to the other party. In the event of termination, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. Termination Expenses are in addition to compensation for Basic and Additional Services and shall be computed as five percent (5%) of the Basic Services and Additional Service Fees.

#### Owner's Responsibility

The Owner shall provide full information, including a program which sets forth the Owner's objectives, schedule, constraints, and budget, with reasonable contingencies and criteria. The Owner shall also furnish any reports, tests, surveys, permits, inspection or other documentation of information or consultants reasonably requested by the Architect. All of foregoing shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

#### Architect of Record

Should the Project proceed beyond the phases of services in this Agreement, the Owner shall designate HMC as the Architect of Record for the Project and will enter into a mutually agreeable Owner/Architect Contract for the remaining phases of services to complete the Project.

## **Ownership of Documents**

The Owner acknowledges that the Architect's Drawings, Specifications, and other documents are instruments of professional services. Nevertheless, the Drawings, Specifications, and other documents prepared under this Agreement shall become the property of the Owner upon completion of this Project and upon payment of all amounts due the Architect. The Architect, however, shall be deemed the author of these documents and shall retain all common law, statutory, and other reserved rights, including the copyright. Should the Owner or any other person, firm or legal entity use, reuse or modify the Architects' Drawings, Specifications or other documents prepared under this Agreement, for other than the Owner's use and occupancy of the completed Project, the Owner agrees to indemnify, defend, and hold the Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs, and expenses, including reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entity, on account of firms, or any other legal entity, on account of any damage or loss to property or person, including death arising out of such use, reuse or modification of the Architect's Drawings, Specifications, and other documents, except where the Architect is found to be solely liable for such damages or losses by a court or forum of competent jurisdiction.

## **Electronic Files**

The Architect is not obligated to provide documents in electronic formats to Owner at any stage of the project's development. When requested by Owner, and at the sole discretion of the Architect, the Architect may transfer documents in electronic file formats to the Owner. The creation of the computer files shall be considered an additional service and the Architect shall be compensated on an hourly basis. By accepting these files/disks and the above stipulations, the Owner agrees to indemnify the Architect, its agents and all consultants against all claims, resulting from the use of these files and the information they contain, by the Owner or their own Consultants, Contractor, Subcontractors, suppliers and all others who receive these files or data. In no event shall the Architect be liable for any loss or profit or any consequential damages as a result of the Clients use or reuse of the electronic files. Owner understands and agrees the Architect relies on various forms of data transmission by an uninterrupted delivery of electrical and telephone service as a means of conducting Architect's business, including the Internet, and that the Internet may be used for intentional and malicious purposes, including transmission of electronic applications commonly referred to as computer "viruses" or "worms". While the Architect endeavors to eliminate the propagation of such applications through its systems and network, the Architect has no control over the actions of third party internet service providers or users of the Internet or similar systems. Consequently, the Owner agrees to waive all claims against the Architect for the propagation of virus applications that may cause damage of any kind to the Owner unless the Architect was the creator of the virus.

## **Indemnification**

The Architect agrees, to the fullest extent permitted by law, to indemnify and hold the Owner harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) made against the Owner that are ultimately determined by the Court to be caused by and only to the extent of the Architect's negligence, recklessness or willful misconduct in the performance of professional services under this Agreement and the Architect's Consultants or anyone for whom the Architect is legally liable.

The Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Owner's negligence, recklessness or willful misconduct and those of the Owner's contractors, subcontractors, agents, or consultants for anyone for whom the Owner is legally liable, and arising from the Project that is the subject of this Proposal. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Architect and Owner, they shall be borne by each party in proportion to its negligence. The Architect is not obligated to indemnify the Owner in any manner whatsoever for the Owner's own negligence.

## **Limitation of Liability**

In recognition of the relative risks and benefits of the project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Architect and his or her subconsultants to the Owner and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes,

so that the total aggregate liability of the Architect and his or her subconsultants to all those named shall not exceed the Architect's total fee for services rendered on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

### **Insurance**

During the term of this Agreement, the Architect agrees to provide evidence of insurance coverage of five million dollars (\$5M). In addition, the Architect agrees to attempt to maintain continuous professional liability coverage for the period of design and construction of this project if such coverage is reasonably available at commercially affordable premiums. The Architect further agrees that the applicable subconsultants will be required to maintain a minimum of one million dollars (\$1,000,000) Errors and Omissions coverage. For the purposes of this Agreement "reasonably available" and "commercially affordable" shall mean that more than half the Architect's practicing in this state in this discipline are able to obtain such coverage. Nothing contained in the Agreement or otherwise is intended to create a fiduciary relationship between the parties.

### **Mediation**

In an effort to resolve any conflicts that arise during the design or construction of the Project or following the completion of the Project, the Owner and the Architect agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Owner and the Architect further agree to include a similar mediation provision in all agreements with independent contractors and consultant retained for the Project and require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

### **Assignment**

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

### **Hazardous Materials**

It is acknowledged by both parties that the Architect's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event the Architect or any other party encounters asbestos or hazardous or toxic materials or toxic mold at the jobsite, or should it become known in any way that such materials at the jobsite, or any adjacent areas that may affect the performance of the Architect's services, the Architect may, at the Architect's option and without liability for consequential or any other damages, suspend performance of services on the project until the Owner retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials, and warrant the jobsite is in full compliance with the applicable laws and regulations.

### **Consequential Damages**

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination.

### **Third Party Contracts**

The Owner shall, upon request of the Architect, supply a copy of the executed Agreement with the Owner's Construction Manager or Project Management Firm, relating to services provided under this Agreement.