



**ARCHITECT/ENGINEER AGREEMENT
FOR PROFESSIONAL SERVICES**

BY AND BETWEEN

THE TEXAS FACILITIES COMMISSION

AND

[INSERT A/E NAME]

FOR

CAPITOL COMPLEX PHASE II

TFC CONTRACT NO. [INSERT]

RFQ NO. 303-1-01556

PROJECT NO. 20-028-8011



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 EXHIBITS. The following exhibits are attached to this Agreement and fully incorporated herein by reference:	
Exhibit A.	2015 Uniform General Conditions
Exhibit B.	2018 Supplementary General Conditions
Exhibit C.	TFC 2018 Architectural/Engineering Guidelines, Edit Date: 3/19/18
Exhibit D.	Professional Services Schedule
Exhibit E.	List of A/E Key Personnel
Exhibit F.	Criminal Background Check and Application Guidelines
Exhibit G.	A/E Scope of Services Detail
Exhibit H.	Approved HUB Subcontracting Plan
Exhibit H-1.	HUB Subcontracting Plan Form
Exhibit H-2.	Progress Assessment Reporting Form
Exhibit I.	A/E Insurance Requirements

**AGREEMENT BETWEEN
THE TEXAS FACILITIES COMMISSION AND
ARCHITECT/ENGINEER**

This Agreement (this “**Agreement**”) is made as of the Effective Date (the “**Effective Date**”), by and between:

THE TEXAS FACILITIES COMMISSION (“TFC”), a state agency
1711 San Jacinto Boulevard
Austin, Texas 78701

as “**Owner**” (as is defined in UGC Section 1.28), and

the **Architect/Engineer** (the “**A/E**”):

[Name]
[Address]
[City, State, Zip]
[Phone:]
[Fax:]

wherein A/E agrees to provide Professional Services for the following Project (the “**Project**”):

[Name of Project]
[Location]
[City, State, Zip]

TFC and the A/E agree as follows:

ARTICLE 1. DEFINITIONS

Unless specifically provided otherwise, all words and phrases in this Agreement in initial caps shall have the meanings set out in this Article 1. All undefined and capitalized terms used herein shall have the meaning given to them in the UGC. In the event of any conflict between the definitions in the UGC, the 2018 *Supplementary General Conditions*, the *TFC 2018 Architectural/Engineering Guidelines*, *Edit Date: 3/19/18* or in any other document that is referenced herein and incorporated for all purposes, and the definitions in this Agreement, the definitions used in this Agreement shall control.

Additional Services means those Professional Services not included in Sections 2.1 to 2.2 of this Agreement which may be requested by TFC at any time for the duration of this Agreement, as discussed in Sections 2.3 and 4.4 below.

A/E means the architect and/or engineer identified on the cover page of this Agreement with whom TFC has entered into this Agreement for the providing of Professional Services and to exercise overall responsibility for the design of the Project as set forth herein.

A/E Guidelines means the TFC 2018 Architectural/Engineering Guidelines Edit Date March 19, 2018, attached hereto and incorporated herein for all purposes as “**Exhibit C**”.

A/E Project Manager means the individual designated by A/E and approved by TFC, as the contact person with specific authority to properly supervise and direct the duties and responsibilities of A/E, on behalf of A/E, pursuant to the terms and conditions of this Agreement, and who shall have decision-making authority to bind A/E with respect to the Professional Services for the Project.

A/E Record Drawings are those final, compiled drawings, prepared and approved by the A/E after review of the Contractor’s notes and drawings of the on-site changes to the Drawings provided in the Record Documents.

Agreement means this Agreement between TFC and A/E whereby A/E agrees to provide Professional Services for the Project identified on the cover page of this document, all as outlined herein.

Applicable Law or Law(s) means any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders now in force or hereafter enacted by Authorities Having Jurisdiction (the “Authorities Having Jurisdiction”), relating to or affecting the Project or arising from this Agreement, including those governing labor, equal employment opportunity, safety, and environmental protection, and further including (i) applicable building, fire, and life safety codes and zoning requirements of Authorities Having Jurisdiction; (ii) accessibility laws, codes, and ordinances including but not limited to the Texas Accessibility Standards of the Architectural Barriers Act, *Tex. Gov’t. Code Ch. 469*, Elimination of Architectural Barriers, and the Americans with Disabilities Act of 1990 (*42 U.S.C. § 12181*); (iii) occupational safety acts and requirements applicable to the Project, including United States Occupational Safety and Health Administration (“OSHA”) requirements and related federal and state regulations; (iv) requirements under Title VII of the Civil Rights Act of 1964, as amended; (v) requirements of the Fair Labor Standards Act and applicable state wage and hour laws including *Tex. Gov’t. Code § 2258.001 et seq.*; (vi) Environmental Laws, including all storm water, street, utility and other related infrastructure requirements, (vii) all requirements related to the use, removal, storage, transportation, disposal

and remediation of Hazardous Materials; and (viii) any other applicable local, state or federal laws respecting the Project.

Basic Services means those Professional Services set forth in Section 2.2 below. Such Basic Services may include, without limitation, architectural design, interior design, furniture, fixtures and equipment layout and consultation, design management, structural engineering, engineering for all MEP Systems, civil engineering, lighting, acoustics, compliance with Title III of the Americans with Disability Act of 1990, 42 U.S. Code (“ADA”), wayfinding, survey, geotechnical engineering, preparation of Drawings, Specifications, and all Construction Documents, construction observation, and construction administration, all as further indicated in Section 2.2 of this Agreement.

Budget means the construction budget for the Project as provided to A/E by TFC and which may be amended from time to time by TFC as further assessments, design, and construction Cost Estimates are provided.

Building Information Model (“BIM”) means the computable, digital, multi-dimensional representation of the physical and functional characteristics of the Project’s facilities and their related life-cycle information in Autodesk Revit format and Autodesk Civil 3D, to be used as a repository of design and construction information for use by the Project Team during the design, bidding and construction phases of the Project, and for TFC’s use throughout the life-cycle of the Project. Members of the Project Team are required to coordinate all efforts with respect to the BIM in accordance with the guidelines set forth in the BIM Execution Plan developed for the Project.

Building Information Model (“BIM”) Execution Plan means that certain plan prepared by the Project team with the guidelines and protocols for use by the Project Team to effectively utilize the BIM throughout the design, bidding, construction and life cycle of the Project.

CAD means AutoCAD DWG format.

Certificate of Substantial Completion means the certificate as defined in UGC Section 1.8, signed by the Contractor, A/E, and TFC establishing the date of Substantial Completion, as defined in UGC Section 1.44, for the applicable part of the Work and identifying responsibilities for security and maintenance as set out in UGC Section 12.1.1.2.

Close-Out Documents has the same meaning as defined in UGC Section 1.10 and includes the Contractor’s marked-up “as-builts” and A/E’s Record Drawings.

Communication Protocol means the communication and tracking procedures to be utilized for interaction and reporting between TFC, A/E and its Consultants, Contractor, and subcontractors, including but not limited to, the use of any EPMCS, as defined herein, utilized by TFC for the Project.

Compensation means the funds paid to A/E for the Professional Services provided by A/E as set forth in Article 4 of this Agreement.

Construction Documents means, collectively, the Drawings, Specifications, details, and other documents prepared by the A/E, its Consultants, and by TFC’s other Consultants that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements required for construction of the Work that are acceptable to TFC.

Construction Manager-at-Risk (“CMR”) or “Contractor” means, subject to the provisions of UGC Sections 1.16 and 1.18, that entity with whom TFC contracts to provide preconstruction and/or construction services to the Project pursuant to an agreement. The terms “Construction Manager” and “CMR” are interchangeable with each other and with the terms “Contractor” and “General Contractor” or other similar terms used in the various parts of the Contract Documents, including the UGC.

Consultant means any person or entity that enters into an agreement with A/E to perform any part of the Professional Services described in this Agreement.

Consulting Agreement means any agreement between A/E and a Consultant.

Cost Estimate(s) means the cost estimate(s) prepared by the appropriate Project Team member during various pre-construction phases of a Project based on the review of Drawings, Specifications and other Deliverables provided by A/E in the design process.

Deliverables means any and all Drawings, Specifications, photos, designs, studies, sketches, computer programs, reports, and other Professional Services, which are specified to be delivered by A/E pursuant to the terms of this Agreement.

Design Development Documents means the design development documents, prepared by A/E for the Project, including plans, elevations, and such other drawings, calculations, and outline specifications that, in TFC’s sole opinion, are of such quality and detail that enable TFC to fix and illustrate the size and character of the entire Project in its essentials as to kinds of materials and assembly details, type of MEP Systems, and type of structure and to coordinate the interface of all architectural and structural elements with all building systems.

Design Program means the overall goals and design objectives of the Project, the aesthetic considerations, and the functional requirements including allocations of space with uses and adjacency relationships for all areas/spaces, operational objectives and such standards of design that TFC may require for all architectural and engineering disciplines in the design and construction of the Project.

Drawings means the plans, drawings, profiles, cross-sections, and supplemental drawings, or reproductions thereof, prepared by the A/E and approved by TFC, which show the locations, character, dimensions, and details of the Work for the Project.

Environmental Laws means any local, state, or federal law, rule, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, as may be amended from time to time including: (i) the Resource Conservation and Recovery Act of 1976 (“RCRA”) (42 U.S.C. § 6901 et seq.), as amended by the Used Oil Recycling Act of 1980 (Pub. L. No. 96-463, 94 Stat. 2055 (1980)), the Solid Waste Disposal Act Amendments of 1980 (Pub. L. No. 96-482, 94 Stat. 2334 (1980)), and the Hazardous and Solid Waste Amendments of 1984 (Pub. L. No. 98-616, 98 Stat. 3221 (1984)), and regulations promulgated thereunder; (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (42 U.S.C. § 9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613 (1986)), and regulations promulgated thereunder; (iii) the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); (iv) the Endangered Species Act of 1973 (15 U.S.C. § 1531 et seq.) and its amendments; (v) laws, statutes, ordinances, rules, regulations, orders, or determinations relating to “wetlands,” including without limitation those set forth in the Federal Water Pollution Control Act (commonly referred to as the “Clean Water Act”) (33 U.S.C. § 1251

et seq.); (vi) the Texas Water Code; and (vii) the Texas Solid Waste Disposal Act (*Tex. Health & Safety Code Ann. §§ 361.001–361.345* (West 2018)).

EPMCS means the TFC’s electronic project management control system.

Final Inspection means the process and procedure described in UGC Section 12.1.

Final Inspection Deadline means the date that is thirty (30) Days after the Substantial Completion Inspection and the date by which A/E must conduct a Final Inspection, unless such deadline is amended by TFC.

Hazardous Materials means (i) any “hazardous waste” as defined by RCRA, and regulations promulgated thereunder; (ii) any “hazardous substance” as defined by CERCLA, and regulations promulgated thereunder; (iii) any toxic substance as defined under or regulated by the Toxic Substances Control Act; (iv) asbestos, polychlorinated biphenyls, radon, or explosive or radioactive materials; (v) underground and above ground storage tanks, whether empty, filled or partially filled with any substance, including without limitation any petroleum product or any other “hazardous substance”; (vi) any substance the presence of which at the Project is prohibited by any Environmental Laws; and (vii) any other substance which by any Environmental Laws requires special handling or notification of any Authorities Having Jurisdiction in its collection, storage, treatment, or disposal.

HUB Compliance Reporting System means the Texas Facilities Commission Historically Underutilized Business (“**HUB**”) online reporting system located at <https://tfc.gob2.com>. The HUB Compliance Reporting System is used to maintain business records documenting compliance with the HUB Subcontracting Plan (“**HSP**”) by submission of monthly Progress Assessment Reports (“**PARs**”).

Invoice means the invoice for payment for Professional Services provided by A/E as submitted in conformance with Article 4 below.

MEP Systems means mechanical, electrical, and plumbing systems.

Notice of Authorization or “NOA” means the written authorization to proceed to the next phase of development of Construction Documents. Notice of Authorization is to be distinguished from a Notice to Proceed.

Notice to Proceed or “**NTP**” means the written notice to be issued at the onset of the Project by TFC notifying A/E to proceed with the commencement of Professional Services described in this Agreement.

Opinion of Probable Construction Cost means a level one Cost Estimate to facilitate budgetary and feasibility determinations, based on historical information with adjustments made for specific Project conditions, wherein estimates are based on costs per square foot, number of rooms/seats, etc. Project information required for estimates at this level shall include a general functional description, schematic layout, geographic location, size expressed as building area, numbers of people, seats, as such, and intended use.

Person means an individual and includes a corporation, an organization, a business trust, an estate, a trust, a partnership, an association, or any other legal entity.

Professional Services means (i) professional architectural services and/or (ii) professional engineering services as defined in *Tex. Gov't. Code § 2254.002*, the scope of which is set out in more detail in Article 2 below. Professional Services shall include Basic Services and, as such services are approved by TFC, Additional Services.

Professional Services Schedule or "Schedule" means the schedule/timeline set out in "**Exhibit D**", and which schedule/timeline sets out the deadlines in terms of a fixed number of days after a preceding deadline for completion and delivery of discrete portions of the Professional Services. At the discretion of the TFC Project Manager and as mutually agreed upon with A/E, the Schedule may be revised and defined with more detail as the Project develops.

Project means that certain Work more particularly identified on the introductory paragraph of this Agreement and includes the design, engineering, and construction of each component design/construction package that may be prescribed by TFC.

Project Analysis has the same meaning as defined in *Tex. Gov't. Code § 2166.001(5)*.

Project Management Professional or "PMP" means the service provider, if any, with whom TFC enters into a Project Management Professional Agreement for Professional Services (the "Project Management Professional Agreement") for the purpose of the PMP providing certain professional project management services for the Project, which may include, among other services, general Project management, strategic Project planning, Project Site planning, operational planning, capital expenditure planning, budgetary impact analysis, and/or Project controls. A/E acknowledges and agrees that the PMP shall have no authority to act for or on behalf of TFC or the State of Texas except as expressly provided for in the Project Management Professional Agreement, a copy of which TFC will provide to A/E upon A/E's request.

Project Team are those entities who may be involved in the design and/or design assist procedures on the particular Project. Project team members include TFC, Using Agency, A/E and its Consultants, PMP (if any), the CMR or Contractor, any separate contractors employed by TFC, and other consultants employed for the purpose of programming, design, and construction of a project. The members of the Project Team will be designated by TFC for any particular project and may be modified from time to time by TFC.

Reimbursable Expenses means those reasonable and necessary out-of-pocket costs and expenses incurred by A/E for the provision of the Professional Services approved by TFC.

RFI means a request for information as defined in UGC Section 1.35.

RFI Response means a written clarification, instruction, and/or interpretation, including, but not necessarily limited to, an architect's supplemental instructions issued in response to an RFI, which response must be consistent with the intent of the Construction Documents.

Schematic Design Drawings means, at a minimum, a Site development plan, building plans, elevations, sections, and perspective sketches sufficient to convey comprehensive design intent.

Schematic Design Package means the combination of: (i) Schematic Design Drawings; (ii) an outline summary of the areas within the proposed Project such summary corresponding to the general categories in the space allocation outlined in the Design Program; (iii) a description of the building and general Site development that shall include an overview of proposed exterior architectural materials and structural systems together with the mechanical, electrical and plumbing

systems and services contemplated; and (iv) an Opinion of Probable Construction Cost that demonstrates conformity with the Budget, all that, in TFC's sole opinion, must be in satisfactory quality and detail.

Site means the lands, areas, and/or buildings indicated in the Contract Documents as being furnished by TFC upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by TFC which are designated for the use of Contractor.

Specifications is defined in UGC Section 1.41.

Standard of Care means that certain standard by which A/E shall perform all Professional Services hereunder, as prescribed by *Tex. Gov't. Code § 2254.0031* (incorporating *Tex. Local Gov't. Code § 271.904(d)*), to wit: (i) with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

Substantial Completion Inspection means the process and procedure described in UGC Section 12.1.1.

Substantial Completion Inspection Deadline means the date that is a fixed number of days after proper written notification is delivered to TFC and A/E by Contractor that Contractor has fully satisfied the requirements set out in UGC Section 12.1.1.1, and by which date A/E must conduct a Substantial Completion Inspection.

TDLR means the Texas Department of Licensing and Regulations.

TFC Project Manager means the individual designated by TFC as the contact person for TFC with the direct responsibility to properly supervise the design and construction of the Project, and the services being provided pursuant Agreement on behalf of TFC, including, but not limited to, serving as the point of contact between TFC, the Using Agency, as defined below, (if any), A/E, and Contractor, and supervising TFC's review and approval of the Professional Services. For the avoidance of doubt, the TFC Project Manager shall be the same person as the Owner's Designated Representative (or "ODR") as defined in UGC Section 1.29.

Uniform General Conditions or "**UGC**" shall mean the Uniform General Conditions for Construction Contracts issued by the State of Texas, published date of 2015, as may be amended from time to time, a copy of which is published on TFC's website and as may be modified by this Agreement and the Special Conditions.

Using Agency has the same meaning as defined in *Tex. Gov't. Code § 2166.001(10)*.

Utilities means water, sewer, gas, electric, telecom, cable, and like services.

Utility Providers means any and all entities that TFC desires to provide Utilities to the Project.

Warranty Report means the comprehensive report of the findings of A/E pursuant to the inspections, and which must include, but not be necessarily limited to, a list of the items needing replacement, correction, or repair.

Work means, in addition to those items set forth in UGC Section 1.49, the provision of all labor, materials, supplies, and equipment that are required of the CMR to manage, implement, and fully construct a Project in accordance with the requirements of this Agreement and the Contract Documents for that Project. The Work may include the Preconstruction and Construction Services described in a Construction Manager-at-Risk Agreement and all additional work required by any change orders, and any other work reasonably inferable from the Contract Documents. The term “reasonably inferable” includes the understanding of the parties that some minor details of the Work may not be shown on the Drawings or included in the Specifications, but they are included in the Work if they are usual and customary components of the Work for a project of the type depicted in the Contract Documents and they are needed to produce a complete and useable facility.

ARTICLE 2. A/E RESPONSIBILITIES AND SCOPE OF SERVICES

2.1 General Responsibilities. A/E shall perform all Professional Services on time and in accordance with the terms of this Agreement and all Exhibits and, in connection therewith, shall render all professional opinions, advice, and exercise its professional judgment at all times in accordance with the Standard of Care. A/E shall be responsible for the professional quality, technical accuracy, and the coordination and completeness of all Deliverables and Professional Services it provides and for their compliance with Applicable Laws and the Standard of Care. A/E represents that it is properly licensed to provide the Professional Services required by this Agreement and shall cause all delegated Professional Services to be performed by appropriately licensed design professionals.

2.1.1 Cooperation/Collaboration. A/E agrees to provide a high degree of cooperation, collaboration, coordination, and teamwork in the delivery of its Professional Services. To this end, A/E shall perform Professional Services in accordance with the Professional Services Schedule and in keeping with TFC’s design intent and Budget. A/E agrees to work collaboratively with its Consultants, the TFC, the Using Agency, and all Contractors, and Consultants retained by TFC to (i) establish and maintain clear lines of responsibility, authority, and communication in accordance with the Contract Documents; (ii) engender a spirit of teamwork among all stakeholders; (iii) guide and provide valuable design input to describe and satisfy the required function of the materials incorporated into the Project consistent with TFC’s requirements of performance, reliability, and maintainability; and (iv) provide valuable input and professional insight in design, preconstruction, and construction meetings which the TFC, Consultants, Contractor, and subcontractors attend.

2.1.2 Coordination of Consultants. A/E shall review all Deliverables prepared by its Consultants so that the Project is appropriately coordinated among the various disciplines. A/E assumes responsibility for the coordination of the Consultants’ documents as part of Basic Services. A/E further agrees to provide its design documents, background information, and design intent for the Project to all Consultants involved in the Project in order to achieve an integrated, consistent, overall design for the Project. A/E shall direct all of its Consultants to make all revisions and modifications to such plans and Drawings as may be necessary to comply with the permitting and other regulatory and legal requirements of the jurisdiction of the Project.

2.1.3 Key Personnel. A/E shall designate in writing to TFC those key employees and representatives who are authorized to act on A/E’s behalf with respect to the Project.

2.1.3.1 Designation. A/E shall designate one or more A/E Project Manager(s) and employees who are responsible for the day-to-day management of the Professional Services. The A/E Project Manager (or one of them as designated by A/E and approved by TFC) shall be

authorized to act on behalf of and bind the A/E in all matters related to Professional Services. The A/E Project Manager, Project engineers, and other representatives, their titles, and a brief description of the limitations of each representative's authority shall be included in "**Exhibit E**" (the "**A/E List of Key Personnel**") to this Agreement. A/E shall not change employee assignments without TFC's written consent, which consent shall not be unreasonably withheld. A/E shall not assign or retain on the Project any person or entity to whom TFC reasonably objects.

2.1.3.2 **Replacement.** The A/E Project Manager and key employees must be committed to the Project. TFC reserves the right to request that the A/E Project Manager and, and any of A/E's employees and Consultants (and their project managers), be removed and replaced if, in the sole opinion of TFC, their performance on this Project or any other Projects, is and/or was not adequate or their continued involvement with the Project will, is, or has become, detrimental to the timely and successful performance of A/E or completion of the Project, including but not limited to, for such reasons as: (i) any past or present violation of any statute, rule, regulation, or ordinance of any city, county, the State of Texas or the United States, or any other Applicable Laws; (ii) TFC's reasonable belief that failure to obtain an acceptable criminal background check will occur; (iii) prior unsatisfactory performance on other TFC projects; and (iv) any other like reasons. A/E shall bear the costs associated with the replacement of any of its staff listed on the A/E List of Key Personnel.

2.1.4 **No Assumption.** No approvals or acceptances by, or on behalf of, TFC shall be deemed to be an assumption of any responsibility by TFC for any defect, error or omission in A/E's providing of Deliverables or any Professional Services.

2.1.5 **Notice to Proceed.** A/E shall commence Professional Services only upon issuance by TFC of a Notice to Proceed. No Professional Services shall be undertaken by A/E except with the prior written direction of the TFC Project Manager. A/E understands and agrees that any Professional Services performed without the prior written direction of the TFC Project Manager is work outside the scope of this Agreement and shall be performed exclusively at A/E's risk.

2.2 **Basic Services.** A/E's Basic Services consist of those described in this Section 2.2 and include the following phases: Pre-Design, Schematic Design, Design Development, Construction Documents, Bidding and Award, and Construction Administration. To the extent the parties deem it necessary, additional technical detail for the Professional Services to be provided by A/E hereunder is contained in the A/E Scope of Services attached as "**Exhibit G**", which is provided for additional detail for and not in lieu of the Basic Services set forth in this Agreement. No phase shall begin until all prior phases have been completed and approved by TFC, unless the TFC gives its prior written consent thereto.

2.2.1 **Pre-Design.** A/E shall deliver the following Pre-Design tasks to TFC no later than the Pre-Design Deadline set forth in "**Exhibit D**":

2.2.1.1 **Analyses/Standards.** Consult with TFC staff and representatives of the Using Agency as may be directed by TFC to become thoroughly familiar with (i) the Project Analysis, or the equivalent thereof; (ii) the Design Program; and (iii) TFC and any Using Agency's technical and design standards including, but not limited to, the A/E Guidelines.

2.2.1.2 **Site.** Inspect and become thoroughly familiar with the Site and any and all relevant and existing Project, facilities studies, and Site-related requirements, including, but not limited

to, codes, rules, regulations, and environmental and/or traffic impact studies that may affect the timely design and construction of the Project.

2.2.1.3 **Budget.** Review and become thoroughly familiar with the Budget proposed by TFC. If, in the opinion of A/E, the Budget is adequate in terms of categories and values so as to allow for the design and timely construction of the Project as contemplated by TFC, A/E shall confirm in writing its ability to prepare the Design Development Documents that will comply with the Design Program parameters and the Budget. If, however, in the opinion of A/E, the Budget proposed by TFC is inadequate or insufficient, the parties shall diligently pursue making appropriate adjustments as would be necessary to enable A/E to confirm the adequacy of the Budget to meet the goals and mission of the Project. If such efforts should fail, TFC, at its option, may (i) waive the provisions of this subsection; or (ii) terminate this Agreement. The parties acknowledge and agree that subsequent changes in Design Program or scope of the Project may be cause to modify and/or amend the Budget. Any such modification or amendment to the Budget must be authorized by TFC in writing.

2.2.1.4 **Utilities.** Interface with all Utility Providers as is reasonably necessary in order to determine the necessary specifications for bringing/connecting all Utilities to the Project.

2.2.1.5 **Consultants.** Determine and identify to TFC which additional Consultants, if any, that are not engaged, or to be engaged, by A/E pursuant to this Agreement, will be necessary to complement the Professional Services in order to fulfill requirements of this Agreement.

2.2.1.6 **CAD/EPMCS.** A/E represents that is proficient in the use of CAD systems and the EPMCS utilized by TFC. During this Pre-Design phase, A/E will coordinate the manner of implementing the CAD system and the EPMCS that will be utilized by TFC throughout the design and construction of the Project. If requested, A/E will assign appropriate A/E staff to receive instruction regarding the use of the EPMCS to be utilized by TFC.

2.2.1.7 **Report.** A/E shall deliver a Pre-Design Task Report to TFC outlining when and how it has accomplished these tasks and providing comments for consideration by TFC. Upon consent of TFC, A/E may deliver one (1) amendment to the Pre-Design Task Report no later than the Pre-Design Deadline.

2.2.2 **Design Milestone Reviews.** A/E agrees to direct and timely provide Professional Services to facilitate review of design milestone Deliverables by TFC and its Contractors and resolve all items of exception noted, including the following:

2.2.2.1 **Schedule.** A/E shall provide information to TFC for a detailed schedule to accommodate a thorough and periodic review of the Construction Documents at the following milestones and in the sequential order listed: (i) Initial Conceptual Drawings; (ii) Schematic Design; (iii) Design Development; (iv) 65% Construction Documents; (v) 95% Construction Documents; and (vi) 100% Construction Documents. Time periods for completion of the design and Construction Documents shall be included in the Professional Services Schedule attached as “**Exhibit D**”. Modification of any durations or deadlines in “**Exhibit D**” shall not be effective except on written approval by TFC in its sole discretion.

2.2.2.2 **Notice of Authorization.** TFC shall issue a Notice of Authorization to A/E to request A/E proceed with each design phase. Upon receipt of the Notice of Authorization, A/E shall proceed with that particular phase of design to meet the deadline for such phase as indicated in

“**Exhibit D**”. The last day of each design phase duration (or the first weekday thereafter) is the A/E deadline for submitting the design phase Deliverables to the Project Team for review.

2.2.2.3 **Review Cycles.** A/E’s Professional Services Schedule shall incorporate standard design milestone review cycles and shall include for each cycle the following: (i) Submittal of Deliverables; (ii) Initial review by Project Team [Owner, if not a CMR delivery]; (iii) review meeting to receive and discuss review comments; (iv) Provide comprehensive list of comments to the Project Team; and (v) resolution of comments, where documented resolution of all comments to the Project Team is provided as certification to TFC that all comments have been reviewed and resolved in accordance with the Standard of Care. Following TFC’s acceptance of the A/E resolution of comments document, TFC shall issue a formal Notice of Authorization to A/E with a copy to the Project Team members so that A/E may proceed to the next design phase within three (3) Days of the certification, or the first weekday thereafter.

2.2.2.4 **Cost Estimates.** Any updated Cost Estimate submitted by the Contractor (as applicable to the A/E’s scope of work) shall be provided to TFC and A/E within seven (7) Days of a review meeting along with any comments such that the Cost Estimate is received by TFC and A/E by A/E’s issuance of the comprehensive list of review comments (see 2.2.2.3(iv) above).

2.2.2.5 If updates to Cost Estimates exceed the Budget by more than twenty percent (20%) for Schematic Design, fifteen percent (15%) for Design Development, ten percent (10%) for 65% Construction Documents and five percent (5%) for 95% Construction Documents, A/E shall consult with TFC to identify potential design and/or Specification modifications that could result in the Cost Estimate being in compliance with the Budget. Approved modifications shall be incorporated into subsequent document submittals at no cost to TFC.

2.2.2.6 A/E shall prepare meeting minutes for all review meetings. Meeting minutes shall be published to TFC Project Manager within seven (7) Days of the meeting.

2.2.3 Schematic Design

2.2.3.1 A/E shall provide an evaluation of the TFC Design Program, Budget, and any proposed schedule at the beginning of the Schematic Design phase. Based on that initial evaluation, the A/E shall prepare sufficient alternative approaches to design of the Project in accordance with A/E Guidelines to satisfy TFC requirements.

2.2.3.2 During the Schematic Design phase A/E shall provide all Schematic Design Drawings, submittals, and review comments, and shall attend all review meetings and provide all Deliverables within the time periods established in Section 2.2.2 and “**Exhibit D**”.

2.2.3.3 A/E shall prepare for TFC approval Schematic Design Drawings and other Deliverables as reasonably required by TFC depicting the character, relationship and scale of Project elements in conformance with the A/E Guidelines. Schematic Design Drawings shall specifically conform to TFC aesthetic design requirements.

2.2.3.4 Upon conclusion of the design milestone review for this phase, A/E shall furnish and deliver to TFC the Schematic Design Package which shall include an Opinion of Probable Construction Cost. The Schematic Design Drawings shall be provided in one (1) full size and three (3) half-size complete printed sets. All sets, and other Deliverables in the Schematic Design Package shall be distributed as directed by the TFC Project Manager.

2.2.3.5 Before proceeding into the Design Development phase, A/E shall obtain written acceptance of the Schematic Design Package and preliminary Cost Estimate by TFC Project Manager and Notice of Authorization to proceed to the Design Development phase. One (1) flash drive of the Schematic Design Package in a format acceptable to TFC shall be provided.

2.2.4 Design Development

2.2.4.1 Based on the Schematic Design Package, adjustments to any Cost Estimate as a result of the review process and any adjustments to the Design Program authorized by TFC, and upon receipt of a Notice of Authorization, the A/E shall prepare, for review by TFC, Design Development Documents in accordance with TFC requirements and A/E Guidelines.

2.2.4.2 The documents produced at this phase of design shall be refined to establish scaled relationships among the Project components and shall include plans, sections, elevations, standard details, perspective sketches, schematic diagrams, and narratives of major enclosures, and structural systems, survey of applicable codes, engineering studies, analysis of alternative designs, and any value engineering performed or recommended by A/E to fix and describe the size and character of the Project as to architectural systems, structural systems and such other elements as may be appropriate. Design Development Documents shall include functional and operational descriptions for the Project commensurate with the level of design completion, and shall also include outline specifications that identify major materials and systems and establish their quality levels. A/E shall also review and revise the Schematic Design Documents for dimensional and graphic accuracy and consistency between the separate Drawings, and compliance with accessibility and planning requirements of Authorities Having Jurisdiction and in conformance with all Applicable Law(s) pertinent to the Project.

2.2.4.3 Design Development Documents shall be based upon reliable and accurate calculations that appropriately determine all architectural and engineering components of the Project, and shall include, but not be limited to the following:

2.2.4.3.1 design criteria for clearing and grubbing, on-site and off-site drainage and erosion control, and for any other grade and subgrade Site preparation and erosion control required by any Authorities Having Jurisdiction;

2.2.4.3.2 design criteria for connection to all proposed temporary and permanent on-site and off-site Utilities;

2.2.4.3.3 design criteria for the proposed structural system, including the rationale for all determinations, all design loads for floor, roof, and lateral loads;

2.2.4.3.4 design criteria for the proposed heating, ventilation and air conditioning system and single line layout of conveyance systems;

2.2.4.3.5 design criteria for the proposed electrical system including reserve capacity;

2.2.4.3.6 an evaluation of energy conservation alternatives, and the filing of the Energy Conservation Design Standard Compliance Statement with the State Energy Conservation Office and the Texas Comptroller of Public Accounts; and

2.2.4.3.7 copies of all manufacturers' documentation that illustrates the proposed materials, equipment and warranties to be specified for the Project.

2.2.4.4 During the Design Development phase, A/E shall provide all Design Development Documents, submittals, review comments, Cost Estimates, attend all review meetings, and provide all Deliverables within the time periods established in Section 2.2.2 and "**Exhibit D**".

2.2.4.5 A/E shall meet with appropriate Authorities Having Jurisdiction to confirm and document building code requirements to apply to the design of the Project. A/E is responsible for addressing all design comments from the multiple Authorities Having Jurisdiction within the time established in Section 2.2.2 above.

2.2.4.6 **BIM Model.** A/E will provide all Services and Deliverables required of A/E as designated in the BIM Execution Plan. Without limitation, A/E may be called upon to provide (1) interface and information technology requirements including specific hardware/ software to be utilized in the BIM approach; (2) software requirements and other interface requirements required to enable CAD Drawings files to be imported into the BIM; (3) process and management of conflict resolution, conflict documentation process and conflict resolution process including frequency of meetings; and (4) reports and other BIM Deliverables as set forth in the BIM Execution Plan. Electronic versions of all Design Development Documents will be provided to TFC in a current two dimensional version of CAD through the EPMCS in addition to information provided by the BIM model. A/E shall report in writing to TFC any deviations between TFC-provided information or programs and the Design Development Documents presented.

2.2.4.7 **Collaboration.** A/E shall work collaboratively at all times with the Project Team to review program scope, phasing, schedules, Cost Estimates, decisions and Project execution planning.

2.2.5 Construction Documents

2.2.5.1 **In General.** Based on the approved Design Development Documents and any further adjustments in the scope and quality of the Project or in the Budget, and upon receipt of a Notice of Authorization to proceed with Construction Documents, A-E shall prepare Construction Documents for approval by TFC. Construction Documents shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems to be incorporated into the construction of the Project, including a full FF&E schedule, where requested and procurement package. Such details shall, at all times, comply with TFC written requirements and the A/E Guidelines. In accordance with Section 2.2.2 above, Construction Documents will be submitted to TFC, reviewed, and any comments incorporated at sixty-five percent (65%) and ninety percent (90%) such that all such comments are resolved at (100%) completion.

2.2.5.1.1 The A/E shall provide with each review submittal a coordination document set with colored overlays of required design disciplines. These shall include, but not be limited to, mechanical, electrical, plumbing, sprinkler, slab penetrations, telecommunications, and instructional technologies support. With the exception of fire sprinkler design, the A/E shall provide all designs and shall not use design performance documents, unless approved by TFC.

2.2.5.1.2 All Drawings and Specifications must, in conspicuous text, expressly prohibit any electrical systems or equipment from being energized or otherwise activated without a minimum of twenty-four (24) hour advance notice to TFC. All Drawings and Specifications shall be appropriately signed, sealed, and dated by the responsible architect(s) and engineer(s).

2.2.5.1.3 Each Deliverable shall be submitted via disk (unless another media is directed or authorized by the TFC Project Manager) and shall be appropriately labeled to include identification of the software program (and version thereof) utilized. All Drawings shall be organized within the layering system (including format and names) in accordance with the A/E Guidelines.

2.2.5.1.4 All electronic data shall include an organized indexing system and/or a table of contents sufficiently detailed as to each discrete subject matter so as to allow for easy identification and location of each file or page of information.

2.2.5.2 In conjunction with the A/E Guidelines and BIM Execution Plan, Construction Document Drawings shall be produced on a CAD system as part of Basic Services. TFC will define the CAD drawing requirements and the final media for the CAD data. Any drawing revisions shall be investigated and coordinated with other design documents and the BIM process. Any redesign required as a result of conflict and/or comparison with the BIM process, if any, shall be provided by A/E in electronic version and provided to TFC as part of Basic Services.

2.2.5.3 **100% Construction Documents.** No later than the 100% Construction Document Deadline set forth in “**Exhibit D**”, and based on the approved ninety percent (90%) complete Construction Documents, A/E shall prepare and deliver to TFC the proposed one hundred percent (100%) complete Construction Documents and the 100% Construction Document Cost Estimate review comments. If such estimate exceeds the Budget, A/E shall consult with TFC to identify further potential Drawing and/or Specification modifications that bring the estimate into compliance with the Budget. Approved modifications shall be incorporated into the Construction Documents at no cost to TFC in the event TFC determines in its sole discretion that such changes are the responsibility of A/E.

2.2.5.4 A/E shall submit all documents required to secure approval of all Authorities Having Jurisdiction. All requests for reimbursement for any direct costs associated with submitting documents to such authorities and for permit fees shall be included as Reimbursable Expenses and paid pursuant to Section 4.2 of this Agreement.

2.2.5.5 The A/E shall file and obtain approval of the Construction Documents from TDLR Architectural Barriers Division, in accordance with *Tex. Gov't. Code Ch. 469*, as amended, and ADA.

2.2.5.6 Prior to releasing the Construction Documents “For Construction”, the A/E shall provide a document that summarizes all design code requirements and provide written certification that the Construction Documents meet all Applicable Laws and the A/E Guidelines. The A/E shall further certify in writing that no asbestos or lead containing materials have been specified or approved by the A/E for installation into the Project.

2.2.5.7 Upon written request by TFC, A/E shall prepare, as an Additional Service, the Construction Documents so as to enable such that the various phases of the Work, may, to at the

discretion of TFC, be awarded pursuant to separate contracts to construct that particular phase, which shall constitute an Additional Service.

2.2.5.8 Before proceeding into the Bidding and Proposal phase, the A/E shall obtain TFC's written acceptance of the final Construction Documents and will reconfirm the alignment of the approved Cost Estimate with the established final Budget. No Construction Documents shall be issued, delivered, or released for any purpose without the prior written consent of TFC. Unless otherwise instructed by TFC, A/E shall deliver three (3) sets of the approved Construction Documents to TFC, any additional copies of which shall be considered a Reimbursable Expense.

2.2.6 Bidding and Award

2.2.6.1 Upon receipt of a Notice of Authorization to proceed, and only in such event, A/E shall assist TFC in the bidding and award phase of the Project by providing the following Professional Services:

2.2.6.1.1 inform qualified entities of the solicitation, Request for Qualifications, and/or Request for Proposals;

2.2.6.1.2 distribute Construction Documents and other documents supporting any solicitation, Request for Qualifications, or Request for Proposal to qualified bidders/proposers and to plan rooms specified by TFC;

2.2.6.1.3 submit the appropriate approved Drawings and Specifications to on-line electronic plan rooms as may be specified by TFC, the submission cost of which constitutes a Reimbursable Expense;

2.2.6.1.4 attend all pre-bid meeting(s) conducted by TFC and/or CMR;

2.2.6.1.5 consult with and advise TFC as to any bidder or proposer inquiries;

2.2.6.1.6 critically review all submittals and responses to Requests for Proposals; and

2.2.6.1.7 prepare any addenda, amendments and/or revisions to the solicitation documents as necessary or directed by TFC.

2.2.6.2 A/E will attend all meetings regarding and participate in the evaluation and scoring of all proposals in accordance with TFC processes and procedures, including, but not limited to, interviewing bidders or proposers. Participation in these sessions shall be included in Basic Services.

2.2.6.3 If the response to the solicitation or Request for Proposal, as determined by TFC in its absolute and sole discretion, exceeds the Budget and TFC does not amend the Budget, A/E shall consult with TFC in order to identify further potential design and/or Specification modifications to bring the response into compliance with the Budget. Approved modifications shall be incorporated into the Construction Documents and appropriate copies reissued at no cost to TFC. Modifications that include deviation from TFC's "Owners Project Requirements" at TFC's sole discretion are not Additional Services and no additional compensation will be paid to A/E for same.

2.2.6.4 TFC may elect to amend the Budget and allocate such additional funds as necessary to accommodate the successful bid or proposal to enable the Project to proceed. In such event, A/E shall assist in the evaluation of the response as it concerns the amended Budget as a Basic Service and not as an Additional Service.

2.2.6.5 In the event A/E receives any inquiries whatsoever from bidders, potential bidders, or potential proposers regarding the Project, A/E shall refer such inquiries to TFC, Procurement Division (512) 463-0209. A/E is not authorized to provide any comments, answers or other similar responses to such inquiries. All inquiries must be forwarded to TFC for response.

2.2.7 Construction Administration. A/E shall provide, as part of Basic Services, the following management and administration services during the construction phase of the Project as specified in the UGC and as follows:

2.2.7.1 ***Periodic Observation/Review.*** A/E shall perform professional observation and review of the Work to determine that all elements and components of the Project are being timely constructed and installed in substantial compliance with the Construction Documents. Such observation and review shall include, at a minimum:

2.2.7.1.1 periodic performance of **on-site observations** of all Work, completed and in progress, all within any schedule provided by Contractor and accepted by TFC;

2.2.7.1.2 all professional inspection functions prescribed in *Tex. Gov't. Code §§ 2166.351(3) and 2166.355*;

2.2.7.1.3 if requested by TFC, designate and provide a full-time A/E on-site representative, the provision of which shall be billed to TFC as an Additional Service;

2.2.7.1.4 timely contract management and administration activities as required herein by utilization of the EPMCS;

2.2.7.1.5 timely review and submit complete responses, within the specified deadlines, to the following:

2.2.7.1.5.1. ***RFI Response:*** seven (7) Days after receipt, or uploading, of an RFI generated by Contractor;

2.2.7.1.5.2. ***Submittals:*** fourteen (14) Days after receipt;

2.2.7.1.5.3. ***Applications for Payment:*** five (5) Days after receipt; and

2.2.7.1.5.4. ***Proposed Change Orders and Unilateral Change Orders:*** five (5) Days after receipt.

If the subject of an RFI cannot be reasonably answered by the RFI Response deadline, or any other deadlines set forth above cannot be timely met, A/E shall so advise TFC and propose an alternative deadline and the basis for such proposal, the acceptance of which shall be in the sole discretion of TFC. A/E shall make reasonable efforts to answer Contractor questions, RFIs, and submittals in the shortest timeframe possible in order to collaborate in the

prosecution of the Work on a schedule that recognizes that “TIME IS OF THE ESSENCE”.

2.2.7.1.6 timely review and certify certificates for payment. Each certificate for payment issued by A/E shall be signed and shall include a statement by A/E that, based upon its on-site observation(s), knowledge, and belief, and its evaluation of the Contractor’s application for payment, (i) the Work has progressed to the point indicated in the application for payment; (ii) the Work is in general conformity with the Contract Documents; and (iii) A/E has received and finds no exception to the testing reports required by the Contract Documents up to the date of the respective Contractor’s application for payment.

2.2.7.2 **Revisions to Drawings/Specifications.** A/E shall prepare such amended or revised Drawings and/or Specifications as would be necessary to fully and accurately reflect any approved changes to the Drawings and/or Specifications. Amended or revised Drawings and/or Specifications shall be delivered to the Contractor with a request for review for any impact to cost of work and any necessary. Thereafter, A/E shall review the Contractor’s proposal and recommend approval or disapproval to TFC. Upon submittal to TFC of any Deliverable, documentation, or data that was created or modified by A/E, including but not limited to Drawings, Specifications, and the Budget, all representations contained therein shall be true and accurate as to each such creation or modification.

2.2.7.3 **Modifications.** Modifications to the Construction Documents which are made necessary by the errors and/or omissions of A/E shall be corrected by A/E at its sole cost and expense. For purposes of this subsection:

2.2.7.3.1 an “omission” is defined as any change or addition to the Construction Documents required to make the Project conform to its original design intent.

2.2.7.3.2 an “error” is defined as any change or addition to the Construction Documents where remediation of previously constructed or installed Work must take place in order to meet code and/or design intent or any omission that is caused by willful misconduct or gross negligence by A/E. In the event that A/E is determined to have been the cause of such an error, A/E shall bear the reasonable construction costs to resolve said error.

2.2.7.4 **Update Construction Documents.** A/E shall timely update all Construction Documents as may be necessary to accurately reflect conditions resulting from approved change orders to enable timely delivery of complete and accurate A/E Record Drawings and Record Documents.

2.2.7.5 **Provide Periodic Reports.** A/E shall provide a periodic report to TFC for each observation and review of the Work. Such periodic reports must describe in reasonable detail the current status of the following: (i) the completed Work in relation to the current, approved schedule provided by the Contractor for the Project; (ii) projected completion dates; (iii) percentage of completion of each discrete subpart of the Work; (iv) any existing or potential deficiencies and/or discrepancies; (v) the status of any revisions or change orders; and (vi) the status of the Record Documents.

2.2.7.6 **Substantial Completion of the Work.** Subject to the provisions of UGC Section 12.1.1, no later than the Substantial Completion Inspection Deadline, A/E shall, together with

the TFC Project Manager, conduct a Substantial Completion Inspection of the Work to determine whether the Work or designated portion thereof, has achieved Substantial Completion.

2.2.7.6.1 **Work Does NOT Meet Substantial Completion Requirements.** In the event TFC and A/E conclude that the Work, or any portion thereof, has not been performed or completed in accordance with the Construction Documents, A/E shall prepare and deliver to Contractor, within [] Days after the Substantial Completion Inspection, a Substantial Completion punchlist with a copy to TFC. A/E shall continue to inspect the Work completed from the punchlist until TFC can issue an appropriate Certificate of Substantial Completion.

2.2.7.6.2 **Work Meets Substantial Completion Requirements.** In the event A/E and TFC conclude that the Work, or a discrete and identified phase thereof, has been performed or completed in accordance with the Construction Documents so as to be determined to be substantially complete, TFC shall promptly issue an appropriate Certificate of Substantial Completion as to the completed Work, as provided in UGC Section 12.1.1.2. A/E shall promptly take all such steps as are required by TDLR, as TFC's authorized agent, to ensure the Project is completed in compliance with applicable TDLR requirements including, but not limited to, obtaining a passing inspection by the A/E's Registered Accessibility Specialist. Any provision in the foregoing to the contrary notwithstanding, A/E shall not recommend the issuance of a Certificate of Substantial Completion if, in its reasonable opinion, A/E determines that any of the items to be contained in the Substantial Completion punchlist referenced in Section 2.2.7.5(i) above cannot or, in all reasonable likelihood will not be, satisfactorily completed within thirty (30) Days of the date of the Substantial Completion Inspection Deadline.

2.2.7.6.3 Issuance of a Certificate of Substantial Completion is a condition precedent to Contractor's right to issue notice that the Work will be ready for Final Inspection.

2.2.7.7 **Final Inspection of the Work.** Subject to the provisions of UGC Section 12.1.2, and no later than the Final Inspection Deadline, A/E shall, together with TFC Project Manager, conduct a Final Inspection of the Work to determine whether all of the Work for the Project has been fully completed in accordance with the Construction Documents.

2.2.7.7.1 **Work does NOT Meet Final Completion Requirements.** In the event TFC and A/E conclude that any of Work has not been corrected or completed in accordance with the Construction Documents, A/E shall prepare and deliver, no later than [] Days after the Final Inspection, a Final Inspection punchlist to Contractor with a copy to TFC. A/E shall continue to inspect the Work completed from the Final Inspection punchlist until TFC can issue an appropriate Certificate of Final Completion.

2.2.7.7.2 **Work Meets Final Completion Requirements** In the event A/E and TFC conclude that all of the Work, or all of the Work in a respective discrete or identified phase, has been corrected or completed in accordance with the Construction Documents and the Final Inspection punchlist referenced in Section 2.2.7.6.1 above and, subject to the prior issuance of a Certificate of Substantial Completion, TFC with A/E's concurrence and signature thereon, shall issue and deliver a Certificate of Final Completion to Contractor.

2.2.7.7.3 In the event that A/E's continued service is required due to causes outside the A/E's direct control (such as, without limitation, Contractor error in reporting readiness of the Work for inspection; premature requests for either Substantial or Final Completion Inspections; significant deficiency in the Work; unexcused delay in the Work; untested or improper performance of systems; or similar failures of Contractor or its subcontractors), such service shall constitute an Additional Service. Any inspection performed by A/E shall comply with and be conducted pursuant to the reservations in *Tex. Gov't. Code § 2166.355*.

2.2.7.7.4 ***Conditions Precedent to Final Payment.*** Issuance of a Certificate of Final Completion is a condition precedent to scheduling the TFC Final Inspection set forth in *Tex. Gov't. Code § 2166.356* and Contractor's right to receive Final Payment.

2.2.7.8 ***Close-Out and A/E Record Drawings.*** No later than [] Days after issuance of a Certificate of Final Completion and prior to A/E's delivery of the Application for Final Payment to TFC, A/E shall:

2.2.7.8.1 Obtain, review and inspect all Close-Out Documents, guarantees, bonds and all other fiscal surety instruments, and all other documentation required of the Contractor by the Contract Documents to ensure full and complete compliance. Within five (5) Days of such confirmation, A/E shall transmit the above-described documentation to TFC.

2.2.7.8.2 Furnish the A/E Record Drawings and Record Documents to TFC.

2.2.7.8.3 Furnish one (1) digital copy of all Construction Documents to TFC. Each disk shall be appropriately labeled to include identification of the software program (and version thereof) utilized. Drawings shall be in CAD format and shall be organized within the layering system in accordance with the A/E Guidelines. Layer format and names shall be in accordance with the A/E Guidelines.

2.2.7.8.3.1. All electronic data shall include an organized indexing system and/or a table of contents sufficiently detailed as to each discrete subject matter so as to allow for easy identification and location of each file or page of information.

2.2.7.8.3.2. It is expressly acknowledged and agreed that the original disks remain the property of the A/E. If differences between the TFC versions and the A/E versions should subsequently be discovered, the A/E versions shall be deemed originals, absent any fraud, malfeasance, or mutual mistake.

2.2.7.9 ***Application for Final Payment.*** At such time that the Certificate of Final Completion has been issued, A/E shall promptly review and, if in proper form, approve the Application for Final Payment in accordance with the UGC, any Supplementary General Conditions, any Special Conditions, and the Construction Documents. A/E may not approve an Application for Final Payment unless or until A/E has been provided a Final Payment checklist fully executed by Contractor, all Close-Out Documents have been submitted pursuant to Section 2.2.7.7 above, and the Final TFC Inspection under *Tex. Gov't. Code § 2166.356* has been performed. These items are absolute conditions precedent to the issuance and enforceability of an Application for Final Payment.

2.2.7.10 In the event of any material conflict between the duties and responsibilities of A/E as set out in the UGC, any Supplementary General Conditions, any Special Conditions, the A/E Guidelines, or in any other document referenced herein and incorporated for all purposes, and this Agreement, the duties and responsibilities specified in this Agreement shall control to the extent of such material conflict.

2.2.8 A/E Services Applicable to all Phases. A/E shall timely deliver the following services, as applicable, during all phases for which A/E is obligated to provide Professional Services to TFC.

2.2.8.1 Critically review and closely scrutinize all documents submitted by third parties, the performance, schedules, and costs of Contractor and all its subcontractors, and evaluate Contractor's proposed schedule and costs as relevant to each design discipline.

2.2.8.2 Actively participate in all meetings and/or teleconferences to bring the full measure of A/E's collective experience, expertise and recommendations to the Project as it pertains to the overall Project or to a specific discipline. A/E shall promptly communicate with and respond to requests for information from all members of the Project Team. A/E shall make its A/E Project Manager and other employees available, as reasonably requested by TFC, at all meetings and conference calls scheduled by TFC.

2.2.8.3 Prepare and deliver all meeting agendas and meeting minutes, field reports, and other similar documentation within one (1) week of the respective work or event, unless directed otherwise by TFC.

2.2.8.4 Answer questions and provide clarifications for the Contractor and its subcontractors to facilitate their thorough examination of all Drawings, Specifications and other documents authored by A/E for accuracy, intended completeness, and constructability.

2.3 **Additional Services.** Services may be required for the design of the Project which are not included as part of the Basic Services described in Section 2.2. If such services are required, they will either be provided by TFC, contracted for separately from a third party, or authorized in writing to be performed by the A/E and paid for by TFC as hereinafter provided. If authorized in writing to be performed by the A/E pursuant to an amendment or otherwise, such services will be subject to this Section 2.3.

ARTICLE 3. TFC RESPONSIBILITIES, INFORMATION, AND APPROVALS

3.1 **Information and Documents to be Provided by TFC.** TFC shall, with reasonable promptness, provide information and documents to A/E:

3.1.1 **TFC Documents to A/E.** When available and applicable, TFC will furnish to A/E copies of or reasonable access to, the following information and documentation regarding the Project:

3.1.1.1 The UGC, Supplementary General Conditions, any Special Conditions, and the A/E Guidelines.

3.1.1.2 Contract forms, bond forms, bidding information and instructions, minimum wage rates for inclusion in the Specifications, and design and construction standards.

3.1.1.3 The PAR for inclusion in the Specifications.

- 3.1.1.4 Any existing as-built and other Drawings that may impact the design and/or construction of the Project. When required for the Project, TFC shall furnish to the A/E existing boundary surveys and topographic maps giving, as applicable, grades and lines of streets and other physical features, both on and adjoining site, boundaries and contours of land, rights-of-way, restriction, easements, deed restrictions, locations, dimensions and complete data pertaining to existing buildings, location of trees, and full information concerning available Utilities, public and private. TFC shall provide any additional boundary and topographical surveys that are found to be needed during design.
- 3.1.1.5 Any geotechnical surveys, reports, soil borings and laboratory testing services, including required test interpretations, test data and reports, and traffic impact studies in the possession of TFC.
- 3.1.1.6 The Project Analysis or equivalent thereof.
- 3.1.1.7 2020 Texas Capitol Complex Master Plan Update;
- 3.1.1.8 The Budget and any required delivery schedules.
- 3.1.1.9 Information concerning the Communication Protocol and EPMCS.
- 3.1.1.10 TFC's Project Requirements.
- 3.1.2 **TFC Services to A/E.** TFC may further assist A/E as follows:
- 3.1.2.1 Upon A/E's receipt of general and criminal background check clearance, TFC may provide assistance to A/E to obtain access to the Site as is reasonably necessary to enable A/E to provide the Professional Services.
- 3.1.2.2 TFC shall designate the TFC Project Manager who will provide supervision the design and construction of the Project and the Professional Services.
- 3.1.2.3 TFC may designate a PMP for the Project to provide certain Project management services in addition to those provided by TFC Project Manager. The PMP will provide overall management of the Project, with a scope of services as further defined in the PMP definition above and in the Project Management Professional Agreement, but which shall include, but shall not be limited to, the following Deliverables:
- 3.1.2.3.1 Planning, management, and coordination of the Project as further defined in the Project Management Professional Agreement, a copy of which shall be provided upon request to A/E;
 - 3.1.2.3.2 Providing an initial Project program scope and strategy for implementation of the scope;
 - 3.1.2.3.3 Review of solicitation documents and other contractual templates and provide recommendations on same;
 - 3.1.2.3.4 Development and management of the Project cost control system;

- 3.1.2.3.5 Development and monitoring of a master schedule and integration with Project cost control system;
- 3.1.2.3.6 Development of quality control plan;
- 3.1.2.3.7 Management of EPMCS;
- 3.1.2.3.8 HUB/S/M/WBE outreach and compliance consultation;
- 3.1.2.3.9 MEP project planning services;
- 3.1.2.3.10 Functional and space programming services;
- 3.1.2.3.11 Estimating services;
- 3.1.2.3.12 Peer review of designed systems, including MEP, building envelope, roofing, weatherproofing, elevators, architectural and structural systems and utilities and civil site development;
- 3.1.2.3.13 Reporting; and
- 3.1.2.3.14 Such other Deliverables as may be developed or assigned to PMP by TFC.

A/E shall, at all times, work collaboratively with PMP, CMR, and the TFC Project Manager as well as other members of the Project Team and shall work to help integrate its Services with those of the PMP and TFC Project Manager throughout the Project.

3.1.2.4 TFC may review and comment on Deliverables submitted by the A/E in such a manner as to avoid unreasonable delay in the progress of the A/E's work. No approvals, comments, decisions or acceptances by, or on behalf of, TFC shall be deemed to be an assumption of responsibility by TFC for any defect, error, or omission in said Deliverables or in A/E's performance of Professional Services.

3.2 **Actions of TFC.** No inspections of the Project or review of Deliverables by TFC shall reduce the level or extent of A/E's responsibilities arising pursuant to this Agreement. Neither the approval and/or final acceptance of a Project or any Deliverables, nor the payment of any Invoice by TFC shall constitute or be deemed, a release of A/E's obligation to perform and timely deliver the Professional Services and any Additional Services in accordance with the Standard of Care and this Agreement.

3.3 Any provisions in this Agreement to the contrary notwithstanding, all consents, revisions, and/or approvals by TFC shall be in its sole and absolute discretion and shall not be valid or enforceable unless evidenced by a fully executed written amendment to this Agreement. A/E acknowledges that the TFC Project Manager shall not have any express or implied authority to vary or otherwise amend or waive compliance with the terms of this Agreement in any way, except for identified deadlines in Section 2.2 herein, and then only as evidenced in writing, signed by TFC Project Manager.

3.4 **No Warranties by TFC.** A/E acknowledges that any and all tests, maps, reports, and Drawings in the possession of TFC that reflect or depict Site boundaries, recorded easements, topography, utility locations, and other Site conditions and/or restrictions which may impact the design and/or construction of the Project were prepared solely for TFC's benefit and for information only purposes, and that A/E shall have no right to rely upon such and that any reliance thereon shall be at A/E's own risk. **TFC HEREBY**

DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE ABOVE-MENTIONED REPORTS, TESTS, MAPS AND DRAWINGS.

ARTICLE 4. COMPENSATION AND PAYMENT

4.1 **Compensation for Basic Services.** For A/E’s timely performance of Basic Services described under Section 2.2 and in accordance with the Schedule set forth in “**Exhibit D**”, TFC shall pay A/E a stipulated sum of [] (\$) []. Professional Services performed or delivered by A/E prior to the Effective Date of this Agreement or after it terminates cannot be compensated.

4.1.1 **Proportional Payments.** Payments shall be made to A/E monthly upon submission of an Invoice as set forth in Section 4.1.2 below. Payments shall be made in proportion to the services performed so that the Compensation for Basic Services shall not exceed the following cumulative percentages at the completion and acceptance of each phase:

Pre-Design	Five percent	5%
Schematic Design	Twenty percent	20%
Design Development	Forty-five percent	45%
Construction Documents	Seventy-five percent	75%
Bidding/Award	Eighty-percent	80%
Construction Administration	One hundred percent	100%

Rule of thumb percentages. Percentages to be negotiated for each contract.

4.1.2 **Submission of Invoices.** No more frequently than once per month, A/E shall submit an Invoice to TFC for services performed and reasonable and necessary costs and expenses incurred through the last day of the previous month. TFC agrees to pay A/E in accordance with *Tex. Gov’t. Code Ch. 2251* also known as the “Prompt Payment Act”.

4.1.3 **Payments to Consultants.** For all services rendered, A/E shall make payment to Consultants within ten (10) Days after receipt of payment from TFC. Should it become necessary, and in the sole discretion of TFC and after five (5) Day notice to A/E, TFC may issue joint checks to A/E and Consultants.

4.2 **Reimbursable Expenses.** Reasonable lodging and traveling expenses shall be considered a Reimbursable Expense under this Agreement when professional and technical personnel of A/E are away from the cities in which they are permanently assigned and are conducting authorized business directly connected with this Agreement. For the purposes of this Agreement, no travel reimbursement shall be made for travel within 100 miles of the location identified as the principal place of business or branch office of A/E, except for overnight stays, which require prior TFC Project Manager approval. The maximum amount for each Reimbursable Expense for travel and lodging shall be the rates established by the Texas Comptroller of Public Accounts, and outlined in Texttravel, <https://fmx.cpa.state.tx.us/fmx/travel/texttravel/index.php>, formerly known as the State of Texas Travel Allowance Guide for state employees. No Reimbursable Expenses shall exceed actual cost. In addition to those items specifically identified above as a Reimbursable Expense, permit fees and associated costs, certain other incidental direct expenses including, but not limited to, copying, telephone, data, and express mail services, and rental of special equipment or tools required in

connection with provision of the Basic Services for the Project, may constitute a Reimbursable Expense; provided however, A/E must obtain the written approval of TFC prior to incurring the expense. Approval may be granted only under those limited circumstances wherein such costs are not considered normal or customary Basic Services under this Agreement. All requests for reimbursement must be accompanied by such documentation which, in the judgment of the TFC, allows for complete substantiation of the costs incurred.

4.3 **Notice of Depletion.** Within seven (7) Days of when the accumulated amount of fees and Reimbursable Expenses reaches eighty percent (80%) of the not-to-exceed amount(s) set forth above, A/E shall deliver written notice thereof to TFC. Nothing herein shall be construed to require TFC to increase the approved amount(s) established pursuant to this Agreement.

4.4 **Additional Services.** Upon request by TFC for Additional Services, A/E shall prepare and submit a proposal for such Additional Services to TFC for approval. Additional Services shall be performed at a rate negotiated between TFC and A/E and must be approved by the parties by amendment to this Agreement. Once approved by TFC, in writing, in advance of the Service, payment shall be made monthly, in accordance with the *Tex. Gov't. Code Ch. 2251*.

4.5 **Taxes.** TFC is an agency of the State of Texas and materials and services utilized in the construction of the Project may be exempted from state and local taxes. A/E is responsible for taking full advantage of all tax exemptions applicable to the Project. TFC will deduct from the applications for payment and from the request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

4.6 **Debts or Delinquencies Owed to the State.** Any payment due under this Agreement may be withheld and applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support pursuant to *Tex. Gov't. Code § 403.055*.

4.7 **State Funding.** This Agreement shall not be construed as creating any debt on behalf of the State of Texas and/or TFC in violation of the TEX. CONST. art. III, § 49. In compliance with TEX. CONST. art. VIII, § 6, it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Agreement may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination. Further, any damages due under this Agreement should not exceed the amount of funds appropriated for payment under this Agreement but not yet paid to A/E, for the fiscal year budget in existence at the time of the breach.

ARTICLE 5. COPYRIGHTS/TRADEMARKS/INSTRUMENTS OF SERVICE

5.1 **Copyrights.** A/E agrees that all Deliverables provided pursuant to this Agreement are subject to the rights of TFC in effect on the date of execution of this Agreement. These rights include the right to use, duplicate and disclose such subject matter and data, in whole or in part, in any manner for alterations, additions, remodels or maintenance; and to have others do so including production of Deliverables in response to a public information request pursuant to *Tex. Gov't. Code Ch. 552*. If the Deliverables produced by A/E are subject to copyright protection, A/E hereby grants to TFC a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such and to authorize others to do so. A/E shall include appropriate provisions to achieve the purpose of this condition in all subcontracts entered into that produce information subject to copyright protection.

5.1.1 **Disclaimers.** All such Deliverables furnished by A/E pursuant to this Agreement shall be considered instruments of its services in respect to the Project. It is understood that A/E does not

represent such Deliverables to be suitable for reuse on any other study or for any other purpose(s). If A/E, at TFC's request and authorization, verifies or adapts A/E's Deliverables for TFC's use on another study, A/E shall be compensated for redesign or new design, bidding, and construction administration services.

5.1.2 Delivery to TFC. A/E shall promptly provide copies of the Deliverables to TFC upon completion, suspension, termination, or cancellation of this Agreement for any reason, including all copies of the Deliverables in any form or medium specified by TFC in this Agreement, whether written, digital, or electronic.

5.1.3 TFC Right to Use. Any provision herein to the contrary notwithstanding, TFC shall be authorized to make subsequent use of the Deliverables for any and all future renovations, modifications, alterations, maintenance, repairs, and the like of the Project.

5.2 No Use of TFC's Name or Trademark. A/E agrees not to make any written use of or reference to TFC or the Using Agency names or registered or unregistered trademarks for any marketing, public relations, advertising, display or other business purpose or make any use of TFC's or Using Agency's facilities for any activity related to the express business purposes and interests of TFC/Using Agency pursuant to this Agreement, without the prior written consent of TFC/Using Agency which consent may be withheld or granted in TFC and/or Using Agency's sole discretion. A/E shall not advertise that it is doing business with TFC or use this Agreement as any sort of marketing or sales tool without the prior written consent of TFC.

5.3 Work Made for Hire. All Deliverables produced by A/E through the performance of Professional Services shall constitute the exclusive property of TFC. All right, title and interest in and to said Deliverables shall automatically and without further notice or action vest in TFC upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Agreement. To the extent that title to any such Work may not, by operation of law, vest in TFC, or such Work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably and unconditionally assigned to TFC. TFC shall also have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. A/E must give TFC and/or the State of Texas, as well as any person designated by TFC and/or the State of Texas, all assistance reasonably necessary to effectuate the intent of this section and to perfect the rights and interests defined herein without any charge or expense to TFC beyond those amounts payable to A/E for the services rendered under this Agreement.

ARTICLE 6. RECORDS, AUDIT, PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

6.1 Books and Records. A/E shall keep and maintain under generally accepted accounting principles full, true and complete records, as are necessary to fully disclose to TFC or the United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with the terms and conditions of this Agreement and all Applicable Laws.

6.2 Inspections and Audits. A/E agrees that all relevant records related to this Agreement or any work product under this Agreement, including practices of its Consultants, shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of A/E where such records may be found, with or without notice by the Texas State Auditor's Office ("SAO"), the contracting agency or its contracted examiners, or the Office of the Attorney General of Texas, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All Consulting Agreements shall reflect

the requirements of this section. A/E's records shall be organized and maintained in its files by each Invoice period and shall be kept on the basis of generally accepted accounting principles and in conformance with the SAO requirements. In addition, pursuant to *Tex. Gov't. Code § 2262.154*, the SAO may conduct an audit or investigation of any entity receiving funds under this Agreement, including direct payments to A/E and indirect payments under a Consulting Agreement; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation.

6.3 **Records Retention.** All records relevant to this Agreement shall be retained for a minimum of seven (7) years. This retention period runs from the date of full and final payment for the relevant goods or services by TFC, or from the date of termination of this Agreement, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation which may ensue.

6.4 **Confidentiality Provisions Applicable to A/E**

6.4.1 **Protection of Confidential Information.** A/E hereby acknowledges, understands and agrees: (i) that in the course of conducting its due diligence regarding the provision of services to TFC, certain Confidential Information (as defined below) will be disclosed to A/E; and (ii) that whether developed by TFC or others employed by or associated with TFC, all Confidential Information is, and shall remain, the exclusive and confidential property of TFC, and shall be at all times regarded, treated and protected as such by A/E in accordance with this Agreement. Failure to mark any information "Confidential" shall not affect the confidential nature of such information.

6.4.2 **Definition of Confidential Information.** "Confidential Information" shall mean all information, whether or not originated by TFC, which is used in, or a part of, TFC's business and operations and is: (i) proprietary to, about, or created by TFC; (ii) gives TFC some competitive advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of TFC; (iii) designated as "Confidential Information" by TFC, or from all the relevant circumstances should reasonably be assumed by A/E to be confidential and proprietary to TFC; or (iv) not generally known by A/E. "Confidential Information" shall not include information that: (i) is or becomes available to the public generally, other than as a result of disclosure by A/E in breach of the terms of this Agreement; (ii) becomes available to A/E from a source (other than TFC) which source is not, to the best of A/E's knowledge, subject to any legally binding obligation to keep the same confidential; or (iii) has been independently acquired or developed by A/E. Such Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing or designated as "Confidential"):

6.4.2.1 Work product resulting from, or related to, work, projects, or services performed or to be performed by TFC for A/E and/or for actual and potential Using Agencies that are related to the business and/or operations of TFC, including but not limited to, methods, processes, procedures, analysis, techniques, and audits used in connection therewith.

6.4.2.2 Computer software of any type or form in any stage of actual or anticipated research and development, including, but not limited to, programs and program modules, routines and subroutines, processes, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches, and system designs.

6.4.2.3 Information relating to TFC's proprietary rights prior to any public disclosure thereof, including but not limited to, the nature of the proprietary rights, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights, and trade secrets).

6.4.2.4 Internal personnel and financial information, vendor names and other vendor information (including vendor characteristics, services, and agreements), customer lists and contacts, business plan(s), purchasing and internal cost information, internal services and operational manuals, pricing, marketing, and all other manner and methods of conducting TFC's business.

6.4.2.5 Marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of TFC which have been or are being discussed.

6.4.2.6 Any information obtained from TFC regarding its pursuit or negotiation of agreements with any potential "Contracting Person" regarding a potential "Qualifying Project" as those terms are defined in the *Tex. Gov't. Code § 2267.001*, as the same may be amended from time to time, including, but not necessarily limited to: (i) the names of the Contracting Person, including their representatives (collectively referred to as "Business Customers"); (ii) the parties to and substance of any agreements between TFC and said Business Customers; (iii) services and data provided, or to be provided, by or to said Business Customers; and (iv) the type, quantity and specifications of products and services purchased, leased, licensed or received, or to be purchased, leased, licensed or received, by Business Customers.

6.4.2.7 In accordance with *13 TAC § 6.94(a)(9)*, A/E shall provide to TFC the descriptions of its business continuity and disaster recovery plan as it regards TFC's vital state records as defined in *Tex. Gov't. Code § 441.180(13)*.

6.4.3 **Covenants.** As a consequence of A/E's acquisition or anticipated acquisition of Confidential Information, A/E will occupy a position of trust and confidence to TFC with respect to TFC's affairs and business. In view of the foregoing and of the mutual consideration to be provided to each party, A/E agrees that it is reasonable and necessary that it make the following covenants.

6.4.3.1 Both during and forever after the performance of its due diligence investigation, A/E will not disclose Confidential Information to any Person or entity other than as necessary in carrying out its duties on behalf of TFC and/or due diligence investigation, without first obtaining TFC's prior, written consent, and A/E will take all reasonable precautions to prevent inadvertent disclosure of such Confidential Information. This prohibition against A/E's disclosure of Confidential Information includes, but is not limited to, disclosing the fact that any similarity exists between the Confidential Information and information independently developed by another Person or entity, and A/E understands that such similarity does not excuse A/E from abiding by its covenant or other obligations pursuant to this Agreement.

6.4.3.2 Both during and after the conduct of its due diligence investigation, A/E will not use, copy, or transfer Confidential Information other than as necessary in carrying out its duties on behalf of TFC and/or due diligence investigation, without first obtaining prior written consent of TFC, and will take all reasonable precautions to prevent inadvertent use, copying, or transfer

of such Confidential Information. This prohibition against A/E's use, copying, or transfer of Confidential Information includes, but is not limited to, selling, licensing, or otherwise exploiting, directly or indirectly, any products or services, including software in any form, that embody or are derived from Confidential Information.

6.4.3.3 A/E agrees not to make any written use of or reference to TFC's name or registered or unregistered trademarks (or any names under which TFC conducts business or operations) for any marketing, public relations, advertising, display or other business purpose or make any use of TFC's facilities for any activity related to the express business purposes and interests of TFC pursuant to this Agreement, without the prior written consent of TFC, which consent may be withheld or granted in TFC's sole and absolute discretion.

6.4.3.4 A/E agrees not to utilize, either directly or indirectly, any Confidential Information in order to facilitate or create direct business relationships with Business Customers of TFC.

6.4.4 Open Records Request or Similar Requests for Information. In the event that A/E receives a request to disclose all or any part of the Confidential Information under the terms of the Texas Public Information Act, a subpoena or other order issued by a court of competent jurisdiction or by another governmental agency, A/E shall: (i) notify TFC of the existence, terms, and circumstances surrounding such a request within one (1) business day of the receipt of the request; (ii) notify the entity requesting the information that such a request for information should be submitted to TFC, not A/E; (iii) provide the entity requesting the information the contact information of TFC's public information coordinator; and (iv) forward all responsive information to TFC within two (2) business days of the receipt of the request.

6.5 **Confidentiality Provisions Applicable to TFC.** Subject to the provisions of Section 6.6 below, TFC shall keep confidential all information, in whatever form, produced, prepared, or observed by A/E to the extent that such information is confidential by Law.

6.6 **Public Records.** Notwithstanding any provisions of this Agreement to the contrary, A/E understands that TFC will comply with the Texas Public Information Act, *Tex. Gov't. Code Ch. 552*. If contacted by TFC, A/E will cooperate with TFC in the production of documents responsive to the request. A/E agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. A/E may request that TFC seek an opinion from the Office of the Attorney General of Texas. However, the final decision whether to seek a ruling from the Office of the Attorney General of Texas will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, A/E will notify TFC's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Agreement and/or any amendment to this Agreement. This Agreement and/or any amendment to this Agreement and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. A/E agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Agreement, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, A/E is required to make any information created or exchanged with the State pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

6.7 **Electronic and Information Resources Accessibility Standards.** Effective September 1, 2006, all state agencies and institutions of higher education shall procure products which comply with the State of Texas accessibility requirements for electronic and information resources specified in *Tex. Admin. Code Title*

I, Ch. 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. If applicable, A/E shall provide the Texas Department of Information Resources with the universal resource locator (“URL”) to its Voluntary Product Accessibility Template (“VPAT”) for reviewing compliance with the State of Texas accessibility requirements (based on the federal standards established under the *Rehabilitation Act § 508*), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<https://app.buyaccessible.gov/baw/Main.jsp>). Consultants not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

6.8 **Cybersecurity Training Required.** If A/E has “access,” as that term is defined in *1 Tex. Admin. Code § 202.1*, to any state computer system or database, then, pursuant to *Tex. Gov’t Code § 2054.5192*, A/E and its Consultants, subcontractors, officers, and employees shall complete a cybersecurity training program certified under *Tex. Gov’t Code § 2054.519*. The cybersecurity training program must be completed by the A/E and its Consultants, officers and employees during the term and any renewal period of this Agreement. A/E shall verify completion of the training program to TFC pursuant to, and in accordance with, *Tex. Gov’t Code § 2054.5192*.

ARTICLE 7. INSURANCE AND INDEMNITY

7.1 **Insurance.** A/E shall maintain in effect, and shall require its Consultants to maintain in effect, at all times during the full term of this Agreement, insurance policies providing the coverages with the policy limits not less than those specified in “**Exhibit I**”. A/E will comply and will require its Consultants comply fully with all requirements of “**Exhibit I**”.

7.2 **Indemnity.**

7.2.1 TO THE FULLEST EXTENT PERMITTED BY LAW, A/E SHALL INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS, AND THEIR EMPLOYEES, AGENTS, ASSIGNEES, DESIGNEES AND REPRESENTATIVES (HEREINAFTER REFERRED TO INDIVIDUALLY AS AN “INDEMNITEE” AND COLLECTIVELY AS THE “INDEMNITEES”) FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS’ FEES AND COSTS, INCURRED BY TFC AND ANY INDEMNITEE THAT ARE:

7.2.1.1 DUE TO THE INTENTIONAL OR NEGLIGENT VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, BY A/E, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE A/E EXERCISES CONTROL;

7.2.1.2 CAUSED BY OR RESULTING FROM ANY NEGLIGENT OR INTENTIONAL TORT, ACT, OR OMISSION IN VIOLATION OF A/E’S STANDARD OF CARE, BY THE A/E, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE A/E EXERCISES CONTROL;

7.2.1.3 CAUSED BY OR RESULTING FROM ANY CLAIM ASSERTING INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK,

COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE INFORMATION FURNISHED BY OR THROUGH A/E, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE A/E EXERCISES CONTROL;

7.2.1.4 DUE TO THE FAILURE OF A/E, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE A/E EXERCISES CONTROL TO PAY ITS CONSULTANTS OR SUBCONSULTANTS AMOUNTS DUE FOR SERVICES PROVIDED IN CONNECTION WITH THE PROJECT;

7.2.1.5 DUE TO THE FAILURE OF A/E, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE A/E EXERCISES CONTROL TO PAY ANY TAXES, TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKER'S COMPENSATION ARISING OUT OF THE PERFORMANCE OF THE SERVICES HEREUNDER; OR

7.2.1.6 THAT OTHERWISE ARISE OUT OF OR RESULT FROM THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING SUCH CLAIMS, DAMAGES, LIABILITIES, LOSSES, COSTS, AND/OR EXPENSES ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT SUCH CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES ARE CAUSED BY OR RESULT FROM ANY NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF THE A/E, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE A/E EXERCISES CONTROL.

NOTHING CONTAINED IN THIS SECTION 7.2.1 SHOULD BE CONSTRUED TO REQUIRE A/E TO INDEMNIFY OR HOLD HARMLESS TFC OR ANY INDEMNITEES FROM ANY CLAIMS OR LIABILITES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TFC OR INDEMNITEES (TEX. GOV'T. CODE § 2254.0031).

7.2.2 Reimbursement of Governmental Agency's Fees In and Coordination of Defense of Claims. To the extent TFC and/or any Indemnitee incurs attorney's fees in defense of any claim asserted against TFC and/or any Indemnitee which arises or results from the alleged acts or omissions of the A/E described in Section 7.2 above, A/E shall reimburse TFC and Indemnitee their reasonable attorneys' fees in proportion to the A/E liability found after a final adjudication of liability. Any defense shall be coordinated by A/E with the office of the Attorney General when Texas state agencies are named defendants in any lawsuit. A/E must obtain the concurrence from the Attorney General's office before agreeing to any proposed settlement. A/E and TFC agree to furnish timely written notice to each other of any such claim.

7.3 Additional Insured Status. A/E shall name TFC, the State of Texas and their employees, agents, assignees, designees and representatives as an additional insureds on the A/E's general liability policy using ISO Additional Insured Endorsements as required in "**Exhibit I**" and provide TFC and the Indemnitees any defense allowed under said policy. Any endorsement to A/E's general liability policy prohibiting or limiting the coverages required herein shall be modified such that the policy will respond to the obligations of the A/E as set forth in this Section to the full extent allowed under Texas law.

7.4 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Section 7.2 or the additional insured requirements in this Section 7.4, such legal limitations are made a part of the contractual obligations and shall operate to amend the obligations to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect. Should any provision or any part of any provision of this Agreement be held invalid, unenforceable or contrary to public policy, law, statute or ordinance, then the remainder of the provision, paragraph, Section and/or Agreement shall not be affected thereby and shall remain valid and fully enforceable.

7.5 **Survival.** The obligations contained in this Article 7 shall survive the expiration, suspension, completion, abandonment and/or termination of the Agreement and final completion of the Professional Services and any other services to be provided pursuant to this Agreement to the extent and for the time periods provided allowed under Texas law.

ARTICLE 8. DISPUTE RESOLUTION

8.1 **Dispute Resolution.** Claims, disputes, and other matters in question arising out of or relating to this Agreement shall be subject to the process set forth in this Article 8. Failure to follow the dispute resolution process shall result in any claim filed by A/E in a court of law having jurisdiction over the claim to be summarily dismissed.

8.1.1 **Texas Government Code Chapter 2260.** Except to the extent *Tex. Civ. Prac. & Rem. Code Ch. 114* applies to any such unresolved claim, in accordance with *Tex. Gov't Code § 2260.004*, the dispute resolution process provided for in *Tex. Gov't. Code Ch. 2260* shall be used by the parties to resolve a dispute under this Agreement. TFC hereby designates general counsel as its officer for examining, negotiating and resolving claims and counterclaims in accordance with *Tex. Gov't. Code § 2260.052(a)*.

8.1.1.1 **Mediation.** The parties hereby agree to mediate any claim or dispute arising under this Agreement in accordance with *Tex. Gov't. Code § 2260.056*. TFC's administrative rules located at *1 Tex. Admin. Code, Part 5, § 111.31* apply to this Agreement and govern the mediation of any dispute arising from this Agreement.

8.1.2 **Texas Civil Practice & Remedies Code Chapter 114 .** In accordance with *Tex. Gov't. Code Section 2260.002(3)* and/or in the event *Tex. Civ. Prac. & Rem. Code Ch. 114* applies to any such unresolved claim, the parties shall follow the dispute resolution process set forth below:

8.1.2.1 **Claims for Breach of Contract and Counterclaims.** A/E may make a claim against TFC for breach of a contract between TFC and A/E. TFC may assert a counterclaim against A/E.

8.1.2.1.1 A/E must provide written notice to TFC of a claim for breach of contract not later than one hundred eighty (180) Days after the date of the event giving rise to the claim. The notice must state with particularity: (i) the nature of the alleged breach; (ii) the amount A/E seeks as damages; and (iii) the legal theory of recovery.

8.1.2.1.2 TFC must assert, in a writing delivered to A/E, any counterclaim not later than the sixtieth (60th) Day after the date of notice of a claim under Section 8.1.2.1.1 above.

8.1.2.2 **Negotiation.** TFC's general counsel shall examine the claim and any counterclaim and negotiate with A/E in an effort to resolve them. The negotiation must begin no later than one hundred twenty (120) Days after the date the claim is received. TFC's administrative rules located at *1 Tex. Admin. Code, Part 5, § 111.31* apply to this Agreement and govern the negotiation of any dispute arising from this Agreement. In the event negotiation results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the settlement to writing, and each party shall sign the settlement. A partial settlement or resolution of a claim does not waive a party's rights as to the parts of the claim that are not resolved.

8.1.2.3 **Mediation.** Before the one hundred twentieth (120th) Day after the date the claim is filed with TFC and before the expiration of any extension of time mutually agreed upon, the parties hereby agree to mediate a claim made under this Agreement. TFC's administrative rules located at *Tex. Admin. Code Title 1, Part 5, § 111.31* apply to this Agreement and govern the mediation of any dispute arising from this Agreement.

8.1.2.4 **Adjudication.** On or after the two hundred seventieth (270th) Day following the date the claim is filed with TFC, unless the parties agree in writing to an extension of time, A/E may adjudicate any claim in accordance with and to the extent permitted under the *Tex. Civ. Prac. & Rem. Code Ch. 114* or *Tex. Gov't. Code Ch. 2260* only after the parties have completed mediation of the claim or dispute in question.

8.1.2.5 **Payment of Claims.** In accordance with *Tex. Civ. Prac. & Rem. Code § 114.011*, TFC may pay a claim resolved under this Section 8.1.2 only from money appropriated to it for payment of contract claims or for payment of the contract that is the subject of the claim. If money previously appropriated for payment of contract claims or payment of the contract is insufficient to pay the claim or settlement, the balance of the claim may be paid only from money appropriated by the legislature for payment of the claim. *Tex. Fin. Code Ch. 304* applies to a judgment awarded to a claimant, except that the applicable rate of interest may not exceed the maximum rate allowed by Applicable Law. Consistent with the *Tex. Civ. Prac. & Rem. Code § 114.011*, property owned by the State or any unit of state government is not subject to seizure, attachment, garnishment, or any other creditors' remedy to satisfy a judgment on a breach of contract claim.

8.1.2.6 All other provisions and requirements of *Tex. Civ. Prac. & Rem. Code Ch. 114* shall apply to such unresolved claims. To the extent the terms and conditions of *Tex. Civ. Prac. & Rem. Code Ch. 114* conflicts with the terms or conditions contained in this Section 8.1.2, the terms and conditions of *Tex. Civ. Prac. & Rem. Code Ch. 114* shall control and apply.

ARTICLE 9. TERM, SUSPENSION, AND TERMINATION

9.1 **Term.** This Agreement shall be effective as of the Effective Date and shall terminate thirty (30) Days after expiration of the Contractor's Warranty Period set forth in UGC Article 13, unless otherwise provided by mutual written agreement of the parties.

9.2 **Suspension of Services.** TFC may, without cause, or by reason of a Force Majeure event, order the A/E in writing to suspend, delay, or interrupt the Professional Services in whole or in part for such period of time as TFC may determine. Upon receipt of such notice, the A/E shall, unless the notice requires otherwise, immediately discontinue services to the extent specified in the notice. A/E shall promptly and orderly arrange all Deliverables, data accumulated, and products of its Professional Services prepared and paid for to the date of suspension and deliver the same to the TFC. A/E shall be compensated for Professional

Services performed prior to the date of the notice of such suspension. When the Project resumes, A/E shall be compensated for reasonable expenses incurred in the interruption and resumption of A/E's Professional Services so long as said expenses are those of the nature allowed under Article 4. If TFC suspends the Project for more than 180 cumulative Days for reasons other than the fault of A/E, A/E may terminate this Agreement by giving not less than seven (7) Days' written notice. No additional compensation shall be paid in the event A/E so terminates other than for Professional Services provided prior to the notice of suspension as set forth herein.

9.3 **Termination**

9.3.1 **TFC Termination for Convenience.** This Agreement may be terminated by TFC for its convenience, in whole or in part, at any time without cause, upon delivery of a notice of termination (a "**Notice of Termination**") to A/E at the address of record as specified in this Agreement. Upon receipt of a Notice of Termination, A/E will immediately cease all Professional Services and undertake to terminate any relevant Consulting Agreements and will incur no further expense related to this Agreement. A/E shall promptly and orderly arrange all Deliverables, data accumulated, and products of its Professional Services prepared and paid for to the date of the Notice of Termination and deliver the same to the TFC within fourteen (14) Days within the receipt of the Notice of Termination. Upon such termination and assuming all such Deliverables are provided to TFC, the A/E shall be compensated for Professional Services performed prior to the date of the Notice of Termination together with Reimbursable Expenses incurred prior to the Notice of Termination. No other damages, costs, losses, or expenses will be paid by TFC.

9.3.2 **Termination for Cause.** Either party may terminate this Agreement upon not less than fourteen (14) Days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

9.3.3 **Force Majeure.** Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Agreement, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused solely by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure" including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, pandemics, epidemics, fires, accidents breakdowns, or floods, earthquakes, hurricanes, or any other natural disaster, or governmental actions.

9.3.3.1 **Notice.** In any such event, the party claiming force majeure shall notify the other of the Force Majeure event in writing within seventy-two (72) hours of the earlier of (a) the commencement of the Force Majeure event or (b) the entry of any order by Authorities Having Jurisdiction of an emergency or Force Majeure event. In the event A/E fails to timely provide said notice, such failure shall constitute, without further notice or action, a waiver of the right to claim Force Majeure for such event. If possible, such notice shall set forth the extent and duration thereof. TFC shall determine, in the exercise of reasonable discretion and based upon an order entered by Authorities Having Jurisdiction as available, the termination of the Force Majeure event.

9.3.3.2 **Due Diligence.** A/E shall exercise due diligence to prevent, eliminate, or overcome any Force Majeure event where it is possible to do so and resume performance of Professional Services at the earliest possible date. However, if nonperformance continues for more than thirty (30) Days, TFC may terminate this Agreement immediately upon written notification to A/E.

ARTICLE 10. SPECIAL PROVISIONS

10.1 **Compliance with Laws.** A/E has determined what licenses, patents and permits are required under this Agreement and shall procure and maintain for the duration of this Agreement any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by A/E and its Consultants to provide the Professional Services required hereunder. A/E will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. A/E agrees to be responsible for payment of any such government obligations not paid by its Consultants during performance of this Agreement. As part of its delivery of Professional Services, A/E shall make itself familiar with and at all times give all notices required by, and shall observe and comply with, all Applicable Laws that in any manner affect performance under this Agreement.

10.1.1 Neither A/E, nor any firm, corporation, partnership, or institution represented by A/E, or anyone acting for them has: (i) violated the antitrust laws of the State of Texas under the *Tex. Bus. & Com. Code Ch. 15*, or the federal antitrust laws; or (ii) communicated directly or indirectly its response to the RFP for this Project to any competitor or any other person engaged in such line of business during the procurement process for this Agreement.

10.1.2 TFC reserves the right, in its sole discretion, to unilaterally amend this Agreement throughout its term to incorporate any modifications necessary to address TFC's or A/E's required compliance with all Applicable Laws.

10.2 **Licensure of Architects.** The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701, Phone (512) 305-9000, has jurisdiction over individuals licensed under the Regulation of the Practice of Architecture Law, *Tex. Occ. Code § 1051*.

10.3 **Licensure of Engineers.** The Texas Board of Registration for Professional Engineers, 1917 IH35 South, Austin, Texas 78741, Phone (512) 440-7723, has jurisdiction over individuals licensed under the Texas Engineering Registration Law, *Tex. Occ. Code § 1001*.

10.4 **Responses to RFQ.** All statements, representations and certifications contained in, or otherwise set out in, A/E's response(s) to the RFQ for this Project were true and correct when made, and shall remain true and correct throughout the term of this Agreement.

10.5 **Certification of No Asbestos Containing Materials or Work.** A/E shall comply with the requirements of the UGC (see Article 13) concerning Asbestos Certification. A/E shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal. All materials used shall be certified as non-asbestos containing building materials.

10.5.1 The A/E shall insure compliance with the following acts from all of its Consultants and assigns:

10.5.1.1 Asbestos Hazard Emergency Response Act (AHERA—*40 CFR 763-99 (7)*);

10.5.1.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—*EPA 40 CFR 61, National Emission Standard for Asbestos*); and

10.5.1.3 Texas Asbestos Health Protection Rules (TAHRP—*Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection*).

10.6 General and Criminal Background Checks.

10.6.1 A/E represents that A/E and A/E's employees have not been convicted of a felony criminal offense, or of a crime involving moral turpitude, or that, if such a conviction has occurred, A/E has fully advised TFC as to the facts and circumstances surrounding the conviction.

10.6.2 All of A/E's employees and Consultants that will perform any work on-site at a state-owned property shall be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by A/E.

10.6.3 All criminal background check forms for all of A/E's employees and Consultants that will initially commence any work on-site must be fully completed and submitted to TFC within fifteen (15) Days of the date of the appropriate notice of award, and the process thereafter must be diligently pursued by A/E. All criminal background checks must be completed before any employee or Consultant performs any services at the Site.

10.6.4 All criminal background checks must be accomplished by the Texas Department of Public Safety (the "DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of A/E's employees and/or Consultants, DPS, or TFC, will adjudicate the results of the criminal background searches in accordance with the criteria set forth in the Texas Facilities Commission Criminal Background Checks and Guidelines, a copy of which is attached hereto as "Exhibit F" and incorporated herein for all purposes. A/E's or any Consultant's failure to timely secure criminal background check clearance shall not be considered a legitimate delay in the performance of Professional Services.

10.7 Drug-Free Work Place. A/E, A/E's employees, and Consultants shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (*Public Law No. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.*) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (*32 CFR Part 280, Subpart F*) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and A/E, A/E's employees, and Consultants shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

10.8 E-Verify. By entering into this Agreement, A/E certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of: (i) all persons employed to perform duties within the State of Texas, during the term of this Agreement; and (ii) all persons (including Consultants) assigned by the A/E to perform work pursuant to this Agreement, within the United States of America. A/E shall provide, upon request of TFC and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the A/E, and A/E's Consultants, as proof that this provision is being followed. If this certification is falsely made, this Agreement may be immediately terminated, at the discretion of TFC, and at no fault to TFC, with no prior notification. A/E shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Agreement. For persons not eligible for E-Verify screening, A/E (including Consultants) shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

10.9 Equal Opportunity. A/E shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. A/E shall take affirmative action to ensure that

applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion, or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. A/E shall post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination subsection. A/E shall include the above provisions in all Consulting Agreements pertaining to the Professional Services to be provided under this Agreement.

10.10 Nondiscrimination. In their execution of this Agreement the parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of this Agreement.

10.11 Immigration Reform. The Immigration Reform and Control Act of 1986, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors, subcontractors, and consultants who contract with the State. A/E shall not place any employee of A/E at a worksite, nor shall A/E permit any employee, nor any Consultant, to perform any work on behalf of, or for the benefit of, TFC without first confirming said employee's authorization to lawfully work in the United States. A/E states that A/E: (i) maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with Applicable Law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to A/E's senior management; and (iv) is without knowledge of any fact that would render any employee or Consultant ineligible to legally work in the United States. A/E further acknowledges, agrees, and states that it: (i) has complied, and shall at all times during the term of this Agreement comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of this Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement, including, without limitation, the completion and maintenance of the Form I-9 for each of A/E's employees; and (iii) has responded, and shall at all times during the term of this Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of this Agreement, A/E shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by TFC or any state agency of A/E or any of its employees. A/E acknowledges, agrees, and represents that all Consultants permitted by it to perform Professional Services hereunder will be required to agree to these same terms as a condition to being awarded a contract for the performance of such Professional Services.

10.12 Historically Underutilized Businesses. A/E will proactively comply with TFC's established policies regarding the utilization of HUB and all other applicable administrative rules and statutes relating to utilization of HUB's by TFC for the Project, including (i) TFC's HUB program, and (ii) the HUB Compliance Reporting System as described in UGC Article 4. A copy of the Approved HSP is attached hereto as "**Exhibit H**" and incorporated herein for all purposes. When required, A/E shall submit an updated HSP on the HUB Subcontracting Plan Form. A copy of the HUB Subcontracting Plan Form is attached

hereto as “**Exhibit H-1**” and incorporated herein for all purposes. Upon TFC approval of HSP update(s), such update(s) shall become, without further notice or action, a part of the incorporated “**Exhibit H**”. A/E shall provide the HUB program of TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the PARs form, a copy of which is attached hereto as “**Exhibit H-2**” and incorporated herein for all purposes. No changes to the HSP can be made by the A/E without the written approval of TFC.

10.12.1 Requirement to Utilize HUB Compliance Reporting System. Pursuant to *Tex. Admin. Code Title 34 §§ 20.85(f)(1)(2) and 20.287(b)*, TFC administers monthly HSP to include the PARs compliance monitoring through a HUB Compliance Reporting System known as B2G. A/E and A/E’s subcontractors must submit required PARs information into the B2G system as a condition of payment. Any delay in the timely submission of PARs information into the B2G system will be treated as a deficiency and the payment request will be subject to suspension until such deficiency has been resolved.

10.13 Human Trafficking Prohibition. Pursuant to *Tex. Gov’t. Code § 2155.0061*, A/E certifies that it is not ineligible to receive an award of this Agreement and acknowledges that this Agreement may be terminated and payment withheld if A/E’s certification in this matter is inaccurate. TFC may not award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year (5) period preceding the date of the award, has been convicted of any offense related to the direct support or promotion of human trafficking.

10.14 Family Code Certification. By signing this Agreement A/E is certifying, pursuant to *Tex. Fam. Code §231.006*, that it is not ineligible to receive the award of or payments under this Agreement by reason of its family support requirements and acknowledges that this Agreement may be terminated and/or payments may be withheld if this certification is inaccurate.

10.15 Franchise Tax Certification. By signature hereon, A/E hereby certifies that it is not currently delinquent in the payment of any franchise taxes due under Chapter 171 of the *Tex. Tax Code Ch. 171*, or that it is exempt from the payment of such taxes, or that it is an out-of-state corporation or limited liability company that is not subject to the Texas franchise tax, whichever is applicable.

10.16 Entities that Boycott Israel. Pursuant to *Tex. Gov’t. Code § 2271.002*, A/E certifies that either (i) it meets an exemption criteria under *Tex. Gov’t. Code § 2271.002*; or (ii) it does not boycott Israel and will not boycott Israel during the term of this Agreement. A/E shall state any facts that make it exempt from the boycott.

10.17 Prohibition Against Contracting with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations. In accordance with *Tex. Gov’t. Code § 2252.152*, TFC is prohibited from entering into a governmental contract (as defined in *Tex. Gov’t. Code § 2252.151(3)*) with a company that is identified on a list prepared and maintained under *Tex. Gov’t. Code §§ 806.051, 807.051, or 2252.153*. If A/E is on the above-referenced list, this Agreement will be considered void or voidable and TFC will not be responsible to pay A/E for any work performed.

10.18 Domestic Iron and Steel Certification. Pursuant to *Tex. Gov’t. Code §2252.201-2252.205*, A/E shall require that any iron or steel product produced through a manufacturing process and used in the Project is produced in the United States. A/E will require that the bid documents provided to all bidders and each applicable subcontract include this same requirement.

10.19 **Buy Texas.** If A/E is authorized to make purchases under this Agreement, A/E certifies that A/E will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to *Tex. Gov't. Code Ch. 2155*.

10.20 **Use of State Property.** A/E is prohibited from using State Property for any purpose other than performing services authorized under this Agreement. State Property includes, but is not limited to: TFC's office space, identification badges, TFC information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TFC issued software, and the TFC Virtual Private Network (VPN client)), and any other resources of TFC. A/E shall not remove State Property from the continental United States. In addition, A/E may not use any computing device to access TFC's network or e-mail while outside of the continental United States. A/E shall not perform any maintenance services on State Property unless this Agreement expressly authorizes such services. During the time that State Property is in the possession of A/E, A/E shall be responsible for (i) all repair and replacement charges incurred by TFC that are associated with loss of State Property or damage beyond normal wear and tear; and (ii) all charges attributable to A/E's use of State Property that exceeds the scope of this Agreement. A/E shall fully reimburse such charges to TFC within ten (10) Days of A/E's receipt of TFC's notice of amount due. Use of State Property for a purpose not authorized by Agreement shall constitute breach of contract and may result in termination of the Agreement and the pursuit of other remedies available to TFC under contract, at law, or in equity.

10.21 **Eligibility Certifications.**

10.21.1 **No Financial Participation in Preparing RFQ.** By signing this Agreement A/E certifies that, pursuant to *Tex. Gov't. Code § 2155.004*, the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

10.21.2 **Disaster Relief Contract Violation.** Under *Tex. Gov't. Code §§ 2155.006* and *2261.053*, A/E certifies that the individual or business entity named in the response to the RFQ and this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

10.21.3 **Excluded Parties.** A/E certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

10.21.4 **Suspension and Debarment.** A/E certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

10.21.5 **No Conflicts.** A/E represents that A/E has no actual or potential conflicts of interest in providing services to the State of Texas under this Agreement and that A/E's provision of services under this Agreement would not reasonably create an appearance of impropriety.

10.22 **Family Code Disclosure of Ownership.** Pursuant to the requirements of the *Tex. Fam. Code § 231.006* regarding delinquent child support, the individual or business entity named in this Agreement is not ineligible to receive payment under this Agreement and, if applicable, A/E has provided, prior to its execution of this Agreement, the name and social security number of each such person (sole proprietors, firm owners, partners, or shareholders) holding at least twenty-five percent (25%) ownership of the business entity

entering into this Agreement. A/E acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

10.23 Deceptive Trade Practices Act; Unfair Business Practices Disclosures. A/E represents and states that it has not been found liable of Deceptive Trade Practices Act violations under *Tex. Bus. & Com. Code Ch. 17* or of any unfair business practice in any administrative hearing or court suit. A/E further certifies that it has no officers who have served as officers of other entities who have been found liable of Deceptive Trade Practices violations or of any unfair business practices in an administrative hearing or court suit. In the event that allegations of Deceptive Trade Practices violations under *Tex. Bus. & Com. Code Ch. 17* or of any unfair business practices against either A/E or any of A/E's officers have occurred or are currently pending in an administrative proceeding or in a lawsuit filed with any court, then A/E has disclosed all such matters to TFC and provided a brief description of each allegation, information regarding the administrative body or court before which the matter is pending, and the current status of the matter.

10.24 Antitrust and Assignment of Claims. A/E represents and states that neither A/E nor any firm, corporation, partnership, or institution represented by A/E, or anyone acting for such firm, corporation or institution has (i) violated the antitrust laws of the State of Texas under *Tex. Bus. & Com. Code Ch. 15*, or the federal antitrust laws; or (ii) communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business during the procurement process for this Agreement. A/E assigns to the State of Texas all of A/E's rights, title, and interest in and to all claims and causes of action A/E may have under the antitrust laws of Texas or the United States for overcharges associated with this Agreement.

10.25 Disclosure of Former State Executives. Pursuant to the *Tex. Gov't. Code § 669.003* relating to contracting with an executive of a state agency, no person who, in the past four (4) years served as an executive of TFC or any other state agency was involved with or has any interest in this Agreement or any contract resulting from this Agreement. If A/E employs or has used the services of a former executive head of TFC or any other state agency, then A/E has provided the name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with A/E, and the date of employment with A/E.

10.26 Certification Concerning Restricted Employment for Former State Officers or Employees Under Tex. Gov't. Code § 572.069. A/E certifies that it has not employed and will not employ a former TFC or state officer who participated in a procurement or contract negotiation for TFC involving A/E within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose service or employment ceased on or after September 1, 2015.

10.27 Financial Interests/Gifts. Pursuant to *Tex. Gov't. Code §§ 572.051* and *2255.001* and *Tex. Penal Code § 36.09*, A/E has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement. In addition, pursuant to *Tex. Gov't. Code Ch. 573* and *§ 2254.032*, if applicable, A/E certifies that A/E knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in A/E's company or corporation. A/E further certifies that no partner, corporation, or unincorporated association which employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which A/E will be dealing on behalf of TFC.

10.28 Prior Employment. A/E knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in A/E's

firm or corporation. A/E further certifies that no partner, corporation, or unincorporated association that employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which A/E will be dealing on behalf of TFC pursuant to the *Tex. Gov't. Code Ch. 573* and § 2254.032. Furthermore, A/E certifies and agrees that if it employs any former employee of TFC, such employee will perform no work in connection with this Agreement during the twelve (12) month period immediately following the employee's last date of employment at TFC.

10.29 **Disclosure of Interested Parties.** A/E certifies that, if the value of this Agreement or the anticipated value this Agreement exceeds \$1 Million, it has complied with *Tex. Gov't. Code § 2252.908* of the *Tex. Gov't Code* and *1 Tex. Admin. Code §§ 46.1* through § 46.3 as implemented by the Texas Ethics Commission (TEC), if applicable, and has provided the TFC with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the A/E.

10.30 **Safety.** A/E, its Consultants of every tier, and all of their employees shall comply with all OSHA rules and regulations provided by the Department of Labor, OSHA, Code of Federal Regulations Chapter 29. Employees of A/E and its Consultants of every tier, and all of their employees and subcontractors shall be trained in accordance with OSHA Chapter 29. A/E and subcontractors and its Consultants shall inform the TFC Project Manager of their Hazardous Electrical Energy Control, Lockout/Tag-out Procedures. A/E's procedure must meet or exceed TFC's procedure as determined by the TFC Project Manager. Details provided by A/E or its Consultants regarding de-energization of equipment must comply with OSHA Regulations 1910.331 – 1910.399.

10.31 **No Smoking.** All facilities where work is to be performed or Professional Services rendered are nonsmoking buildings. A/E, its Consultants, and their employees are prohibited from smoking in all areas except in areas designated for smoking.

ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1 **Time Is of the Essence.** Time is of the essence with respect to this Agreement; provided however, in the event that any of the deadlines set forth herein end on a Saturday, Sunday, or legal state or federal holiday, such deadline shall automatically be extended to the next day which is not a Saturday, Sunday, or legal state or federal holiday.

11.1.1 **Notices.** All notices, demands, and requests required in this Agreement shall be in writing and shall be deemed to have been properly delivered and received: (i) three (3) business days after deposit in a regularly maintained receptacle for the United States mail, certified mail, return receipt requested and postage prepaid; or (ii) one (1) business day after deposit with Federal Express or comparable overnight delivery service for overnight delivery with all costs prepaid. All notices, demands and requests hereunder shall be addressed as follows:

If to TFC: [Name of TFC Contact]
[Title]
[Address]
[City, State Zip]

With Copies to: [Name]
[Title]
[Address]
[City, State Zip]

If to A/E: [Name of A/E Contact]
[Title]
[Name of A/E]
[Address]
[City, State Zip]

Any party may make reasonable changes in the person or place designated for receipt of notices upon five (5) business days advance written notice to the other party.

11.2 **Name and Organizational Changes.** A/E must provide TFC with written notification of all name changes and organizational changes relating to A/E including, but not limited to, merger, acquisition, corporate reorganization or sale no later than sixty (60) days prior to such change. In its notice to TFC, A/E shall describe the circumstances of the name or organizational change, state its new name, provide the new Tax Identification Number, if available, and describe how the change will impact its ability to perform under the Agreement. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of A/E or successor entity, as applicable, to maintain its status as a party to this Agreement. If the change entails personnel changes for personnel performing the responsibilities of the Agreement for A/E, A/E shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information or documents related to the change and its impact on the Agreement and A/E shall supply the requested information within five (5) working days of receipt of the request. Written consent shall be at the sole and absolute discretion of TFC with no requirement to be reasonable. TFC may terminate the Agreement due to any change to A/E that materially alters A/E's ability to perform under the Agreement.

11.3 **No Assignment or Delegation by A/E.** A/E shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Agreement without the prior written consent of TFC. Notwithstanding the foregoing, it is mutually understood and agreed that A/E may subcontract with third parties for some or all of the Professional Services to be performed. All services under this Agreement shall be performed in the principal offices of the A/E and its Consultants. If A/E or Consultant offices exist out of the State of Texas, services shall be performed in offices within Texas in so much as proper expertise and timeliness can be accomplished. Services performed outside the State of Texas shall be limited to offices and personnel located in the United States. Outsourcing or subcontracting outside the United States shall not be permitted unless approved in writing by the TFC. A/E will provide written notification to TFC of any such Consultant performing work under this Agreement, including the name and taxpayer identification number of Consultant, the task(s) being performed, and the number of Consultant employees expected to work on the task.

11.4 **Relationship of the Parties.** A/E is associated with TFC only for the purposes and to the extent specified in this Agreement, and with respect to performance of the contracted services pursuant to this Agreement, A/E is and shall be an independent contractor. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of A/E or any other party. A/E shall be solely responsible for, and TFC shall have no obligation with respect to the following: (i) withholding of income taxes, FICA, or any other taxes or fees; (ii) industrial or workers' compensation insurance coverage; (iii) participation in any group insurance plans available to employees of the State of Texas; (iv) participation or contributions by the State to the State

Employees Retirement System; (v) accumulation of vacation leave or sick leave; and (vi) unemployment compensation coverage provided by the State.

11.5 **Limitation on Authority and No Other Obligations.** A/E shall have no authority to act for or on behalf of TFC or the State of Texas except as expressly provided for in this Agreement; no other authority, power, or use is granted or implied. A/E may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of TFC or the State of Texas.

11.6 **Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between A/E and TFC and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by A/E and TFC.

11.7 **Governing Law and Venue.** This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought pursuant to this Agreement shall be in a court of competent jurisdiction in Travis County, Texas. A/E hereby irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of, or responding to, any action or proceeding in such jurisdiction with respect to this Agreement or any document related hereto.

11.8 **Waivers.** No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. The failure of a party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in this Agreement shall not be construed as a waiver or a relinquishment thereof for the future. Notwithstanding any provision of this Agreement, nothing herein constitutes a waiver of the constitutional, statutory or common law rights, privileges, defenses or immunities of the parties.

11.9 **No Waiver of Sovereign Immunity.** Nothing in this Agreement shall be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas, TFC, or the Using Agency. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Agreement or under Applicable Law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

11.10 **No Third-Party Beneficiaries.** This Agreement is made solely and specifically among and for the benefit of the parties named herein and the Using Agency, and their respective successors and assigns, and no other Person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of this Agreement as a third-party beneficiary or otherwise, except as otherwise provided herein for the benefit of TFC only.

11.11 **Abandonment and Default.** If A/E defaults on this Agreement, TFC reserves the right to cancel this Agreement without notice and either re-solicit or re-award this Agreement to the next best responsive and responsible respondent. The defaulting A/E will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work.

11.12 **No Presumptions for Ambiguities.** Each party hereby represents that although the initial draft of this Agreement may have been prepared by one party, both parties have been given the opportunity to review this Agreement with counsel of their choice, and have made additions, revisions, and amendments hereto.

Therefore, each party hereby covenants and agrees that they are co-drafters of this Agreement such that any ambiguities cannot be construed against any party.

11.13 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

11.14 **Unenforceable or Invalid Term / Severability.** Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

11.15 **Multiple Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same Agreement.

11.16 **Captions.** The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

11.17 **Survival.** Termination of this Agreement for any reason shall not release A/E from any liability or obligation set forth in this Agreement that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, insurance, transition, records, audit, property rights, dispute resolution and invoice and verification.

11.18 **Further Assurances.** A/E shall take such actions and execute such other and additional documents as are reasonably necessary or desirable in order to carry out the purposes and intent of this Agreement.

11.19 **False Statements; Breach of Representations.** By signature to this A/E, A/E makes all the representations, warranties, guarantees, certifications and affirmations included in this Agreement. If A/E signs this Agreement with a false statement or it is subsequently determined that A/E has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Agreement, A/E shall be in default under this Agreement, and TFC may terminate or void this Agreement for cause and pursue other remedies available to TFC under this Agreement and Applicable Law.

11.20 **Authority to Execute Agreement.** The parties hereto represent that the Person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement. A/E acknowledges that this Agreement is effective for the period of time specified in this Agreement. Any services performed by A/E before this Agreement is effective or after it ceases to be effective are performed at the sole risk of A/E.

[INTENTIONALLY BLANK – SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed and bound themselves to this Agreement effective as of the date the last party signs this Agreement.

A/E:

[INSERT A/E NAME]

By: _____
(original signature)

Name: _____

Title: _____

Date: _____

OWNER:

THE TEXAS FACILITIES COMMISSION

By: _____
(original signature)

Name: _____

Title: _____

Date: _____

PM: _____

GC: _____

Dir: _____

DED: _____

EXHIBIT A

2015 UNIFORM GENERAL CONDITIONS

EXHIBIT B

2018 SUPPLEMENTARY GENERAL CONDITIONS|

EXHIBIT C

TFC 2018 ARCHITECTURAL/ENGINEERING GUIDELINES, EDIT DATE: 3/19/18

EXHIBIT D

PROFESSIONAL SERVICES SCHEDULE

EXHIBIT E

LIST OF A/E KEY PERSONNEL

EXHIBIT F

CRIMINAL BACKGROUND CHECK AND APPLICATION GUIDELINES

EXHIBIT G

A/E SCOPE OF SERVICES

EXHIBIT H

HUB INFORMATION

EXHIBIT H-1

APPROVED HUB SUBCONTRACTING PLAN

EXHIBIT H-2

HUB SUBCONTRACTING PLAN FORM

EXHIBIT I

A/E INSURANCE REQUIREMENTS

A/E shall maintain in effect, and shall require its Consultants maintain in effect, at all times during the full term of this Agreement, insurance policies providing the minimum coverages and policy limits specified in this “**Exhibit I**”. A/E will comply and will require its Consultants comply fully with all requirements of “**Exhibit I**” prior to commencing any Professional Services.

I.1 **Required Coverages.**

Policy	A/E	Consultants
Professional Liability	\$10,000,000 each claim \$10,000,000 annual aggregate	\$2,000,000 each claim \$2,000,000 annual aggregate
Workers’ Compensation	Statutory	Statutory
Employers’ Liability Insurance:	\$1,000,000	\$1,000,000
Bodily Injury by Accident (accident)	\$1,000,000	\$1,000,000
Bodily Injury by Disease (policy limit)	\$1,000,000	\$1,000,000
Bodily Injury by Disease (each employee)	\$1,000,000	\$1,000,000
Commercial General Liability	\$2,000,000 each occurrence \$4,000,000 annual general aggregate \$4,000,000 products-completed operations aggregate	\$1,000,000 each occurrence \$2,000,000 annual general aggregate \$2,000,000 products-completed operations aggregate
Automobile Liability	\$1,000,000 each accident	\$1,000,000 each accident
Umbrella/Excess Liability	\$10,000,000 each occurrence \$10,000,000 aggregate	
Environmental/Pollution Liability Insurance	Included in A/E’s Professional Liability Policy or separate negotiated limit	Included in A/E’s Professional Liability Policy or separate negotiated limit
Cyber/Privacy Liability	\$500,000 each location \$100,000 away from premises	\$500,000 each location \$100,000 away from premises

I.1.1 **Architect/Engineers Professional Liability Insurance.** Professional liability coverage shall insure from and against all negligent acts, errors, and omissions committed by A/E, its employees, and Consultants, that arise out of this Agreement or the Professional Services performed by A/E, including its vicarious liability. Any retroactive date must be effective prior to beginning of services for TFC. The purchase of an extended discovery period or an extended reporting period on a claims-made policy will not be sufficient to meet the terms of this provision.

A/E and its Consultants shall keep such insurance in force at all times during the course of this Agreement and until all claims arising out of the Professional Services are barred by the statute of repose provided under Texas law.

I.1.2 Workers' Compensation and Employers' Liability Insurance. Pursuant to *Tex. Labor Code § 406.096(a)*, A/E and its Consultants shall provide workers' compensation and employers' liability insurance for all employees providing Professional Services on this Project with limits as set forth above.

I.1.2.1 Pursuant to *Tex. Labor Code §406.096(b)*, A/E shall require each Consultant to certify in writing to the A/E that said Consultant provides, and will provide on this Project, workers' compensation and employers' liability insurance for all of Consultant's employees employed on this public project. TFC shall be entitled, upon request and without expense, to receive copies of A/E and all Consultant's written certifications of insurance.

I.1.2.2 The policy must include an Other States Endorsement to include the State of Texas if A/E's or Consultants' businesses are domiciled outside the State of Texas.

I.1.2.3 All policies shall be endorsed to include a Waiver of Subrogation in favor of TFC.

I.1.3 Commercial General Liability. Commercial General Liability ("CGL") coverage shall be provided on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). The CGL insurance general aggregate limit shall apply separately to this Project and A/E and Consultants shall provide evidence of same through ISO Endorsement CG 25 03 05 09. The policy shall include endorsement CG2503, Amendment of Aggregate Limits of Insurance (per Project), or its equivalent. CGL insurance shall cover liability including, but not limited to, liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, electronic data liability (under endorsement ISO CG 04 37), property damage, and personal injury and death resulting therefrom. This policy shall provide for full separation of insureds and shall not include any insured v. insured exclusions or limitations. The following is a non-exclusive list of additional exclusions and limiting endorsements that are prohibited:

- Liability assumed by CMR under a written agreement, including any contractual liability limitation endorsement restricting coverage to only liability that would exist in the absence of a contract, such as the ISO CG 21 39 or its equivalent, or any amendment of insured contract definition endorsement such as the ISO CG 24 26 or its equivalent.
- Explosion, collapse, underground property damage, blasting, blowouts, cratering, or the like, including any Explosion, Collapse And Underground Property Damage Hazard endorsement such as the ISO CG 21 42 or ISO CG 21 43 endorsements, or their equivalent.
- Cross-liability on claims between any insureds, other than claims between named insureds.
- Injury to independent contractors and employees of independent contractors.

- Any type of classification or business description limitation endorsement.
- Any type of endorsement modifying the employer's liability exclusion.
- Any type of habitational or residential exclusion.
- Any type of punitive, exemplary or multiplied damages exclusion.

TFC reserves the right to notify A/E of any additional prohibited exclusions or endorsements in advance of placing the insurance for the Project. A copy of the CGL Schedule of Forms and Endorsement page(s) of the policy shall be provided to verify the coverages required, that the Endorsements required by these insurance requirements are included, and that none of the prohibited exclusions exist in the policy. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by TFC. CGL insurance must be kept in force at all times during the course of this Agreement and until all claims arising out of the Professional Services are barred by the statute of repose provided under Texas law.

I.1.4 Automobile Liability Insurance. An automobile liability insurance policy shall be provided by A/E and all Consultants. This policy shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used in connection with the Work on the Project and shall include coverage for loading and unloading hazards. Automobile liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. No aggregate shall be permitted.

I.1.5 Umbrella/Excess Liability Insurance. An excess or umbrella liability insurance policy shall be provided by A/E and all Consultants with limits as provided in I.1 above. This policy shall be excess of the CGL, automobile liability, and employers' liability insurance on a "following form" basis of underlying policies. This policy shall be excess over and be no less broad than the CGL, automobile liability, employers' liability as described in these insurance requirements, including but not limited to the required additional insured status, designated project(s) and/or location(s), general aggregate, waiver of subrogation, notice of cancellation, and prohibited exclusions or limitations. The policy shall provide coverage where underlying primary insurance coverage limits are exhausted or otherwise unavailable or inadequate to cover a loss. Any excess or umbrella policy shall be kept in force at all times during the course of this Agreement and until all claims arising out of the Professional Services are barred by the statute of repose provided under Texas law.

I.1.6 Environmental/Pollution Liability Insurance. A pollution liability policy shall be procured by A/E and all Consultants. This policy shall cover a pollution event or release on the Site resulting from the A/E's activities under and during the term of the Agreement including any activities of A/E Consultants. The annual aggregate shall apply separately to this Project. A/E's pollution liability coverage shall include mold, mold remediation, bacteria, naturally occurring hazardous substances, and diminution in value resulting from mold as it pertains to work performed by the A/E or its Consultants. This policy shall remain in effect at all times during the course of this Agreement and until all claims arising out of the Services are barred by the statute of repose provided under Texas law, if such coverage is commercially available.

I.1.7 Cyber/Privacy Liability Coverage. Cyber/Privacy liability insurance shall be provided by A/E and all Consultants to cover risk of loss to electronic data. The policy must include

coverage for electronic vandalism to electronic data, including coverage for a third party's willful alteration of data, introduction of viruses which impact electronic data, unauthorized use of electronic data, and denial of service to website or email destinations.

I.2 **Insurance Required of Consultants.** Each Consultant must provide professional liability, workers' compensation, employers' liability, commercial general liability, automobile liability, excess/umbrella coverage, cyber/privacy liability and pollution liability with limits as set forth as set forth above under "Consultants". The limits of such insurance may be adjusted in accordance with the nature of each Consultant's operations but, if such adjustment is requested, it must be submitted to TFC for approval before the Consultant enters into an agreement or any work commences under the agreement in question. Additionally, all Consultants shall fully comply with all other provisions set forth in this "**Exhibit I**" all as more particularly described above and below.

I.3 **General Requirements for All Insurance Policies (including those provided by Consultants).** All insurance coverages must be placed with carriers acceptable to TFC, licensed to do business in Texas, and having an A.M. Best's Guide rating of A-/VII or better by A.M. Best, confirmed by one or more insurance certificates on an Acord 25 form. All insurance coverages shall be written on an occurrence basis (except professional liability) and shall be primary and not excess insurance vis-à-vis any coverage, any self-insurance, or other policy of insurance maintained by TFC. Any coverage underwritten on a claims-made basis must include a retroactive date for the policy and all renewals coincident with the Effective Date of this Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. Any premiums for this extended reporting period shall be paid by A/E. Certificates of insurance and additional insured endorsements required herein shall provide that the policies shall be primary without right of contribution from any insurance carried by TFC. Each policy, other than workers' compensation/employers' liability and professional liability, shall contain a severability of interest clause stating "*it is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.*" Each policy shall provide for full separation of insureds and include no insured v. insured limitations or exclusions.

I.4 **Additional Insured Status.** TFC and Indemnites and their officers, directors, agents, and employees shall be included as additional insureds on policies procured by A/E and its Consultants, except workers' compensation and professional liability, using ISO Additional Insured Endorsements CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (Completed Operations) or their equivalent, as approved by TFC. A/E shall provide additional insured endorsements demonstrating the additional insured status of TFC and the Indemnites as provided herein on such forms as required by TFC.

I.5 **Waivers of Subrogation.** Each policy of insurance, except any professional liability policy, must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against TFC and Indemnites and their officers, directors, agents, and employees. With respect to all such policies, A/E waives any and all rights of recovery or subrogation against TFC and its Indemnites and their officers, directors, agents, and employees.

I.6 **Evidence/Proof of Insurance/Endorsements.** Evidence of the insurance coverage required of A/E must be furnished to TFC before commencement of the Work and as coverage renews. Evidence of coverages shall be provided in certificates of insurance. Copies of the commercial general liability policies and all endorsements shall be made available to TFC upon request. The insurance policies shall provide or be endorsed to include a requirement for each insurer to give TFC notice at least thirty (30) Days prior to any (i) erosion of limits; (ii) non-renewal; (iii) cancellation; or (iv) material change. "Material Change" includes, without limitation (a) a change in the policy period; (b) a material revision to, or removal of, a coverage section; (c) a reduction of the amount of limits of insurance, provided such reduction is not the

result of payment of damages, medical expenses, or claim expenses; or (d) an increase of the amount of any self-insured retentions. Similarly, the commercial general liability policy shall be endorsed to include a 10-Day Notice of Non-Payment of Premium in favor of TFC.

I.7 **Notification to TFC.** Any and all policies, endorsements, approvals, certificates of insurance and/or notifications of erosion of limits, cancellation, non-renewal, or material change shall be transmitted to:

The Texas Facilities Commission
Attention: Insurance Specialist
P.O. Box 13047
Austin, Texas 78711
Insurance@TFC.State.tx.us

I.8 **Deductibles, Retentions & Exclusions.** Insurance deductibles and premiums shall be paid by A/E or its Consultants without reimbursement by TFC. Any under-insurance, self-insurance, self-insured retentions (SIR), deductibles, and exclusions in coverage in the insurance policies required under this agreement to the extent applicable, shall be assumed by, for the account of and at the sole risk of A/E and Consultants. All deductibles and self-insured retentions shall be disclosed to TFC before the placement of any insurance. No deductible or self-insured retention shall exceed \$100,000, without prior written approval of TFC. Seems a bit high to me.

I.9 **No Commencement of Work.** A/E shall not, nor allow any Consultant(s) to, commence the performance of Professional Services under this Agreement until the proof of satisfaction of the insurance requirements has been received and approved by TFC. However, any approval of the proof of satisfaction of the insurance requirements by TFC shall not relieve or decrease the liability of A/E hereunder.

I.10 **Duty to Review/Cancellation.** A/E represents and acknowledges it has carefully reviewed its insurance program with its legal and risk advisors and believes its insurance policies comply with the insurance requirements in this Agreement, and further acknowledges a continuing obligation to ensure its insurance policies remain compliant herewith. Within 48 hours of a written request by TFC, A/E shall submit true and complete copies of A/E's policies of insurance in electronic form by emailing true and complete of such policies to TFC's insurance analyst. The true and complete copies of all applicable insurance policies shall be submitted in a timely manner, as no contract will be executed without the receipt, review, negotiation, and TFC acceptance, of the submitted policies. The policies shall include therewith a letter provided by A/E's broker, agent, or its applicable insurance carrier representative for each policy, certifying that the electronic copies of the policies as furnished are true and correct copies. In addition, upon conducting such review, if TFC's insurance analyst determines A/E's insurance policies contain deficiencies that cause such policies to fail to comply with the insurance requirements of this Agreement, A/E agrees to reimburse TFC for all costs and fees incurred in attempting to resolve such policy deficiencies by modification or special endorsement thereof. A/E shall not cause or permit any required insurance to cancel or lapse prior to the expiration of all warranty periods. A/E must update all expired policies prior to submission of any invoice.

I.11 **Right to Review.** TFC reserves the right to review these insurance requirements during the effective period of this Agreement and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions, or the claims history of the industry and/or of A/E, provided however, such modifications must be commercially available to A/E. TFC shall make an equitable adjustment to the A/E Compensation for any additional cost resulting therefrom.

I.12 **Failure to Obtain or Maintain.** Failure to timely obtain and maintain the insurance coverages as required under this Agreement may subject A/E to disqualification from eligibility to participate in any other or future projects with TFC and/or suspension of the Professional Services. A/E shall provide TFC thirty (30) Days written notice of erosion of any aggregate limits below the minimum amounts required by this Agreement. In the event A/E or its Consultants fail to timely renew or pay any of the renewal premiums for any expiring policies, TFC shall have the right (but not the obligation) to: (i) make such payments; and/or (ii) acquire replacement coverage, and set off the amount(s) or costs thereof against the next payment(s) coming due to A/E under this Agreement or under any other contract between TFC and A/E. TFC may withhold any payments due to A/E from this Project or any other TFC project until satisfaction is achieved.

I.13 **Enforceability of Requirements.** None of the requirements contained herein as to types, limits, or TFC's approval of insurance coverage to be maintained by A/E is intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by A/E under this Agreement or otherwise provided by law. All insurance coverages required by this Agreement, as amended by TFC, shall be written in strict conformance with these requirements to provide complete and full coverage to TFC for the performance of Professional Services under this Agreement. If coverages and/or specified endorsements are not available due to a change in Texas law, A/E and its Consultants shall secure equivalent coverages, which shall be subject to approval by TFC. To the extent any provision of these insurance requirements is held to be void, voidable, invalid, or unenforceable, the remainder of these insurance requirements shall not be affected thereby and shall remain valid and fully enforceable.

I.14 **Losses Paid by A/E.** Actual losses not covered by insurance as required by this Agreement shall be paid by A/E. A/E hereby waives all rights of recovery and releases, and shall cause its Consultants to release TFC from any and all claims or causes of action whatsoever which A/E and/or its Consultants might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by A/E and/or its Consultants pursuant to this Agreement.

I.15 **TFC a Third-Party Beneficiary.** It is hereby acknowledged and agreed that TFC is a third-party beneficiary of any agreement(s) between A/E and any and all Persons who procure, or cause to be procured any policy of insurance required hereunder.

I.16 **Required Insurance Coverages No Effect On Indemnification.** The insurance and insurance limits required herein shall not be deemed as a limitation on A/E's liability under the indemnifications granted to TFC.

I.17 **No Warranty That Insurance Limits Will Be Adequate to Fully Protect A/E.** The insurance requirements set out herein shall not be interpreted as any representation or warranty that the insurance coverage and limits will necessarily be adequate to fully protect A/E.