PROFESSIONAL ARCHITECT/ENGINEER SERVICES AGREEMENT FOR DESIGN OF PEDESTRIAN MALL AND UNDERGROUND PARKING GARAGE FOR THE CAPITOL COMPLEX PROJECT BETWEEN

THE TEXAS FACILITIES COMMISSION AND KIRKSEY ARCHITECTS INC., dba KIRKSEY

TFC CONTRACT NO. 19-014-000

PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES AGREEMENT

BETWEEN

THE TEXAS FACILITIES COMMISSION AND

KIRKSEY ARCHITECTS, INC., DBA KIRKSEY

The Texas Facilities Commission (hereinafter referred to as "TFC" or "Owner," as defined herein), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701, and Kirksey Architects, Inc., dba Kirksey (hereinafter referred to as "Architect/Engineer" or "A/E" as defined below), located at 6909 Portwest Drive, Houston, Texas 77024 enter into the following agreement for professional services (hereinafter referred to as the "Agreement" or "Contract") pursuant to the Professional Services Procurement Act, Tex. Gov't Code Ann. Ch. 2254, Subch. A (West 2016), to be effective as of the Effective Date (as defined below). Nothing in this Agreement shall be interpreted or construed to make Contractor (as defined below) a third-party beneficiary hereunder.

RECITALS

WHEREAS, TFC has determined that it requires architectural and engineering services for the design of a Pedestrian Mall and Underground Parking in Phase 1 of the Capitol Complex Project to be located in Austin, Texas; and

WHEREAS, in reliance upon the representations made by A/E in its response to TFC's Request for Qualifications 303-8-01663, original posting date June 15, 2018 ("RFQ"), TFC has determined that A/E has demonstrated its competence and qualifications to provide the requested services; and

WHEREAS, A/E has agreed to provide the services contemplated hereunder; and

WHEREAS, TFC has agreed to compensate A/E for these services, as provided herein;

NOW, THEREFORE, in consideration of the mutual promises, commitments and representations herein it is hereby agreed as follows:

I. DEFINITIONS.

1.1. Definitions. Unless specifically provided otherwise herein, all words and phrases in this Agreement in initial caps shall have the meanings set out in the *2015 Uniform General Conditions* (hereinafter referred to as "UGC") and this Section 1.1. In the event of any conflict between the definitions in the UGC and the *2018 Supplementary General Conditions*, a digital copy of each of which is incorporated herein by reference for all purposes in Portable Document

Format ("PDF") on the compact disk attached hereto and labeled "TFC Contract No. 19-014-000 / Kirksey / Exhibits CD" (hereinafter referred to as "Exhibits CD"), and named therein as "Exhibit A," and "Exhibit B," respectively, in A/E Guidelines (as defined below), or in any other document referenced herein and incorporated for all purposes, and the definitions in this Agreement, the definitions used in this Agreement shall control to the extent of the conflict.

1.1.1. *Additional Services* means those services not included in Article II of this Agreement which may be requested by TFC at any time for the duration of this Agreement, as discussed in Section 4.5 below.

1.1.2. *Approval* or *Approved* means the written approval of TFC. TFC may exercise the right of Approval in its sole discretion. TFC's Approval shall also require formal approval of TFC's board of commissioners (the "Commissioners") whenever approval of the Commissioners is expressly required by this Agreement, or is otherwise required by state law or TFC's policies. The act of an Approval shall not constitute a waiver of TFC's rights hereunder or excuse A/E from fulfilling its obligations to perform in accordance with this Agreement.

1.1.3. *A/E Guidelines* means the TFC Architectural/Engineering Guidelines, a digital copy of which is incorporated herein by reference for all purposes in PDF on the Exhibits CD and incorporated herein for all purposes as "Exhibit C."

1.1.4. *A/E Personnel* means all A/E's staff, Subcontractors, subconsultants and vendors of any tier who contract to perform any of A/E's obligations or duties hereunder, as shown in List of A/E's Key Personnel, incorporated herein for all purposes as "Exhibit D."

1.1.5. *A/E's Fee Schedule and Staffing Plan* is that fee schedule that provides for payment of A/E's fee and includes A/E's plan for staffing to be covered by A/E's Fee, as described in A/E's Fee Schedule and Staffing Plan, incorporated herein for all purposes as "Exhibit E."

1.1.6. *A/E Project Manager* means the individual designated by A/E, and who must be 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.

1.1.7. *Architect/Engineer (A/E)* means Architect or Engineer of Record, Kirksey Architects, Inc., dba Kirksey, the architectural and engineering service provider contracted by TFC hereunder to perform the professional architectural and engineering design services, after receipt of bridging documents from the Master Architect/ Engineer (Master A/E) at the end of conceptual design, and any licensed professionals and other personnel working under the Architect/Engineer's supervision, or otherwise engaged by TFC to prepare the documents for all or a portion of the Project.

1.1.8. *Budget* means the maximum amount of funding that has been authorized by and is available to TFC to pay CMR for the services and Work required under the Construction Contract for the Project, including any preconstruction services fee, Guaranteed Maximum Prices (including all construction management fees therein), and all change orders. The Cost of Work, not including management fees or preconstruction services, is currently estimated to be Sixty-Five Million Three Hundred Fifty Thousand and No/100 Dollars ($65,350.000), which estimate may be amended from time to time by TFC in its sole discretion as further assessments, design and construction cost estimates are developed by the Project Team.

1.1.9. *Building Information Model* or *BIM* means a computable multi-dimensional representation of the physical and functional characteristics of the Project's facilities and their related life-cycle information, 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 facilities.

1.1.10. *CAD* means AutoCAD DWG format unless specifically provided otherwise herein.

1.1.11. *Certificate of Substantial Completion* means the certificate signed by CMR, A/E, and TFC establishing the date of Substantial Completion for the applicable part of the Work, and identifying responsibilities for security and maintenance as set out in UGC, Paragraph 12.1.1.2.

1.1.12. *Close-out and Record Documents Deadline* means the date that is a fixed number of days after the date of delivery of all Close-out Documents to A/E.

1.1.13. *Close-out Documents* has the same meaning as defined in UGC, Section 1.10 and includes CMR's marked-up "as-builts."

1.1.14. 1.1.14. *Communication Protocol* means the communication and tracking procedures to be utilized for interaction and reporting between TFC, CMA, CMR, Contractors, Subcontractors, SSE and A/E, including but not limited to, the use of any EPMCS utilized by TFC for the Project.

1.1.15. *Conceptual Design Package(s)* or *CDP(s)* means one or more sets of documents developed by Master A/E and CMA, as approved by Owner, to provide sufficient information to describe and establish the design parameters for the Projects, including, as appropriate, the legal description of the Sites of the Projects, site surveys, site development requirements and other information related to the Sites, conceptual criteria for the Projects, interior space requirements, special material requirements, material quality standards, special equipment requirements, cost or budget estimates, Project Schedules, quality control requirements, applicable codes and ordinances, provisions for utilities, parking requirements, or any other requirement, as applicable.

1.1.16. *Conceptual Design Phase* means that stage of a Project culminating in the preparation and submission of a Conceptual Design Package that includes preliminary design or series of preliminary design alternatives based on CMA's and Master A/E's review of Owner's Design Program and the Texas Capitol Complex Master Plan, located at: https://www.tfc-ccp.org/ and incorporated herein for all purposes as "Exhibit F"(hereinafter referred to as the "Master Plan"). This phase includes CMA's and Master A/E's preliminary evaluation of alternative approaches to designing the Projects, taking into consideration the requirements of the Projects and the Program Budget, including the elements of the *Schematic Design Package.* This shall include 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; and (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 MEP Systems and services being contemplated.

1.1.17. *Consideration* means the funds and any and all other forms of valid, legal consideration as discussed in Article IV of this Agreement.

1.1.18. *Construction Contract* means all the contract documents comprising the contract between Owner and CMR, including, as applicable, all exhibits to the Construction Contract, Owner's solicitation, addenda, notice(s) to bidders, CMR's Guaranteed Maximum Price(s), prevailing wage schedules, list of Subcontractors, Owner's notice to proceed, bonds, general provisions, special provisions, Specifications, Drawings, all modifications, all written amendments, change orders, field orders, orders for minor changes in the work, and the Architect/Engineer's written interpretations and clarifications issued on or after the effective date of such contract.

1.1.19. *Construction Manager Agent or CMA* means Balfour Beatty Construction, LLC, the service provider engaged hereunder as the TFC's fiduciary agent to assist the TFC with management and coordination of the overall design and construction program for the Capitol Complex Projects.

1.1.20. *Construction Manager-at-Risk* or *CMR* has the same meaning as defined in UGC, Section 1.18, and also refers to the service provider to be engaged by TFC for Phase 1 of the Project to perform (or cause to be performed) the Work on Phase 1 of the Project as a Construction Manager-at-Risk.

1.1.21. *Construction Documents* has the same meaning as defined in UGC, Section 1.17.

1.1.22. *Construction Documents Phase* means that stage of a Project that follows the Design Development Phase, and culminates in the preparation and issuance of fully complete construction design documents that illustrate and incorporate Approved changes to the Design

Development Documents and consisting of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work, subject to additional information to be provided by CMR for the Architect/Engineer's review, such as shop drawings, product data, samples and other similar submittals.

1.1.23. *Contractor* has the same meaning as defined in UGC, Section 1.16.

1.1.24. *DD Documents* means the design development documents, i.e., such plans, elevations, and such other drawings, calculations, and outline specifications that 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 and type of structure and to coordinate the interface of all architectural and structural elements with all building systems.

1.1.25. *Deliverables* means any and all drawings, specifications, cost estimates, photos, designs, studies, sketches, computer programs, field and laboratory data, reports, and other information, whether in printed or electronic media format, provided or furnished in appropriate phases by A/E in the performance of the Professional Services, which are specified to be delivered by A/E pursuant to the terms of this Agreement.

1.1.26 *Design Development Phase* means that phase of a Project that follows the Conceptual Design Phase, and culminates in the preparation and issuance of detailed design documents that illustrate and incorporate Approved changes to the Schematic Design Documents, and include drawings, specifications, plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of a Project and to identify the quality levels of major materials and systems for architectural, life safety, fire protection, civil, structural, mechanical and electrical disciplines, and such other elements and systems as may be appropriate.

1.1.27. *Design Package* means all or a part of the Construction Documents, including all Drawings, Specifications and other Construction Documents issued by the Architect/Engineer at a designated point in time as required for bidding, procurement and construction for a specific scope of the Work.

1.1.28. *Design Program* means, collectively, the overall goals, the design objectives, the aesthetic considerations, the functional requirements, and the design and construction for the Project, including: (i) allocations of space with uses and adjacency relationships for all areas/spaces; (ii) 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; and (iii) the development of the PMP.

1.1.29. *Drawings* means the graphic and pictorial portions of the documents developed in connection with the Design Program, Schematic Design Phase, Design Development Phase, Construction Documents Phase, or the construction phase, and including all information

required to maintain the Building Information Model(s), showing the design, location and dimensions of the Work, and generally including plans, elevations, sections, axonometrics, isometrics, details, schedules and diagrams.

1.1.30. *Effective Date* means the latest Date of Execution set forth below the signatures of the Parties' duly authorized officers, as shown on the last page of this Agreement.

1.1.31. *EPMCS* means the Approved electronic project management control system.

1.1.32. *Final Completion* means that stage of completion by which all "punch-list" items identified in connection with the Substantial Completion of a Phase of the Project have been corrected, completed, or otherwise addressed to the satisfaction of Owner, Architect/Engineer, all building inspectors, and all other Governmental Authorities, as evidenced by the issuance of a certificate of Final Completion signed by CMR and Architect/Engineer.

1.1.33. *Fixed Limit of Cost* means the maximum amount of funding that has been authorized by and is available to TFC to pay for all design and construction costs for the Project, as approved by Owner, including the Budget and other costs for the procurement of furniture, fixtures and other equipment ("FFE") to be installed in the Project. Fixed Limit of Cost shall be established upon Approval of the Budget. The Fixed Limit of Cost is currently estimated to be Ninety-One Million Four Hundred Thousand and No/100 Dollars ($91,400,000.00) and may be adjusted up or down at any time during any phase of the Project by Owner, in Owner's sole discretion, whether by use of any contingency budgeted by Owner or otherwise.

1.1.34. *Final Inspection* means the same process and procedure described in UGC, Subsection 12.1.2.

1.1.35. *Final Inspection Deadline* means the date that is thirty (30) days after the Substantial Completion Inspection, and by which date A/E must conduct a Final Inspection.

1.1.36. *Governmental Authorities* means all federal, state, and local governmental entities having jurisdiction over the Project, and A/E.

1.1.37. *Hourly Fee Rates* shall mean the rates set forth in the Schedule of A/E's Hourly Fee Rates for Additional Services, incorporated herein for all purposes as "Exhibit G," for Additional Services to be performed by A/E.

1.1.38. *Initial Conceptual Designs* means initial concept drawings and block diagrams that are of such quality and detail to enable TFC to establish design direction.

1.1.39. *Laws and Regulations* means any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all Governmental Authorities, including those governing labor, equal employment opportunity, safety, and environmental protection,

including but not limited to, all applicable requirements of Title III of the Americans with Disabilities Act and the Texas Architectural Barriers Act and Texas Accessibility Standards found in Texas Government Code, Chapter 469 (West 2012 & Supp. 2015).

1.1.40. *Master A/E* means Page Southerland Page, Inc., the service provider TFC has engaged pursuant to Texas Government Code §2254 as the TFC's agent for oversight, coordination and management of the overall design of the Capitol Complex Projects by each of the Architect/Engineers for the Projects.

1.1.41. *MEP Systems* means mechanical, electrical, and plumbing systems.

1.1.42. *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.

1.1.43. *Notice of Termination* means the written notice of termination described in Section 3.2.

1.1.44. *Notice to Proceed* or *NTP* means the written authorization to proceed with commencement of Professional Services that may be delivered to A/E by TFC.

1.1.45. *Order-of-Magnitude 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, and the like. Project information required for estimates at this level include a general functional description, schematic layout, geographic location, size expressed as building area, numbers of people, seats, and the like, and intended use.

1.1.46. *Owner*, *Texas Facilities Commission*, or *TFC* means and includes the State of Texas, the Texas Facilities Commission, and any other agency of the State of Texas acting through the Texas Facilities Commission in connection with this Agreement.

1.1.47. *PAR* means the progress assessment report in such form as is prescribed by TFC and which has the same meaning as defined in UGC, Section 1.31.

1.1.48. *Pay Application* means the application for payment submitted by A/E as discussed in Article IV below.

1.1.49. *Periodic Reports* means the written reports required to be submitted to TFC by A/E, which reports shall be compiled and submitted in such form as prescribed by TFC.

1.1.50. *Person* means an individual, firm, partnership, corporation, association and

any other legally recognized entity.

1.1.51. *Post-Final Inspection Punchlist* means the punchlist of items that A/E will deliver to CMR that sets out any part of the Work that was not corrected or completed in accordance with the Contract Documents as of the Final Inspection.

1.1.52. *Post-Final Inspection Punchlist Deadline* means the date that is a fixed number of days after the date by which A/E shall deliver any Post-Final Inspection Punchlist to CMR.

1.1.53. *Pre-Design Deadline* means the date that is a fixed number of days after delivery of a Notice to Proceed, and by which date A/E shall (i) complete all the Pre-Design Tasks, and (ii) prepare and deliver the Pre-Design Task Reports to TFC.

1.1.54. *Pre-Design Task Report* means a comprehensive report(s) that sets forth the results of, and answers to, each of the Pre-Design Tasks discussed in Article II.

1.1.55. *Pre-Design Tasks* means the mobilization and pre-design services to be provided to TFC as discussed in Article II.

1.1.56. *Pre-Final Inspection Punchlist* means the list of any unresolved punchlist items that A/E will deliver to CMR when a Certificate of Substantial Completion is delivered by TFC as discussed in UGC, Paragraph 12.1.1.2.

1.1.57. *Pre-Final Inspection Punchlist Deadline* means the date that is a fixed number of days after the completion of the Substantial Completion Inspection, and by which date A/E shall prepare and deliver a proposed Post-Substantial Completion Inspection Punchlist to TFC.

1.1.58. *Professional Services* means the services required by this Agreement, as further described in Article II below.

1.1.59. *Professional Services Schedule* or *Schedule* means the schedule/timeline set out on the Exhibits CD and incorporated herein for all purposes as "Exhibit H," 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, which deadlines shall be calculated from the effective date of a Notice to Proceed. At the discretion of TFC project manager and as mutually agreed upon with A/E, the Professional Services Schedule may be revised and defined with more detail as the project develops.

1.1.59.1. The Parties acknowledge that upon execution of this Agreement, the Schedule will not reflect the date of issuance of NTP, nor whether the Project will be completed as a single package or in multiple combinations of packages. At

such time that NTP is issued, TFC shall enter said date into the Schedule, which will result in the Professional Services Schedule for such package being filled-in with specific deadlines.

1.1.59.2. Upon entry of the date of issuance of NTP, the Professional Services Schedule, as revised, shall become, without further notice or action, the effective Professional Services Schedule, and said revised Schedule shall be considered substituted for the original Professional Services Schedule, and shall be added to the Exhibits CD.

1.1.60. *Project* Pedestrian Mall and Underground Parking Garage and related work for the Capitol Complex Project, as further described in Article II.

1.1.61. *Project Analysis* has the same meaning as defined in Texas Government Code, Section 2166.001(5) (West 2016).

1.1.62. *Program Management Plan* means a management plan for all the projects in the Design Program developed by the CMA.

1.1.63. *Project Manual* means the compilation of the general requirements and the Specifications to be developed and issued for the Work for the Project by the Architect/Engineer.

1.1.64. *Project Stage(s)* means a discrete period during the construction of the Project in which a scope of Work required by a Design Package is performed by CMR.

1.1.65. *Project Team* means the SSE, Master AE, A/E, CMA, CMR, and any separate Contractors, consultants, or other service providers employed by TFC for the purpose of planning, programming, design, construction, and commissioning of the Project. The constitution of the Project Team may vary at different phases of the Project and may be modified from time to time by TFC.

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

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

1.1.68. *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.

1.169. *RFI Response Deadline* means the date that is seven (7) calendar days after receipt, or uploading, of an RFI, and by which date A/E must deliver an RFI Response to CMR.

1.1.70. *Safety Incident* means any failure of A/E or any of A/E Personnel to manage performance of A/E Personnel in accordance with the safety requirements set forth in Article V of this Agreement as necessary to recognize and successfully prevent or avoid any of the following circumstances (each being a Safety Incident):

1.1.70.1 the reported observation of a potential safety hazard, unsafe work practice, or lapse in prudent safety management that can reasonably be expected to lead to injury or death to any person, or damage to any property;

1.1.70.2. the presence of any unsafe working condition, including without limitation any unauthorized or improper usage of equipment or faulty equipment, that reasonably be expected to lead to injury or death to any person, or damage to any property; and

1.1.70.3. the occurrence of bodily injury or death, or property damage arising out of or in connection with the Project or the performance of the Services.

1.1.71. *Schematic Design Drawings* means, for purposes of this agreement, the Conceptual Design Package as defined in Section 1.1.15.

1.1.72. *Schematic Design Package* means, for purposes of this agreement, the Conceptual Design Package as defined in Section 1.1.15.

1.1.73. *Scope of Services* means the Professional Services as set out in Article II below.

1.1.74. *Services* means the services provided by A/E, A/E Personnel and/or by Subcontractors and/or consultants retained by A/E for the Project.

1.1.75. *Site(s)* means the lands, areas, and/or buildings generally described in Article II as the Capitol Complex Site, and indicated in the Contract Documents as being furnished by TFC as the Sites upon which the Work is to be performed.

1.1.76. *Site Services Engineer* or *SSE* means Cobb, Fendley & Associates, Inc., the service provider TFC has engaged to provide the site environmental and engineering services for the Project.

1.1.77. *Specifications* means that portion of the Construction Documents consisting of the written technical requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services, including all requirements of applicable building and life safety codes.

1.1.78. *Standard of Care* means A/E's Standard of Care defined in Section 6.1.4.

1.1.79. *Subcontract* means any agreements between A/E and a Subcontractor or consultant.

1.1.80. *Subcontractor* means any Person that enters into an agreement with A/E to perform any part of the Professional Services.

1.1.81. *Substantial Completion* means that stage of completion by which the Work or a portion thereof is accepted by execution of a certificate of Substantial Completion by Owner, Architect/Engineer and CMR as sufficiently completed, inspected, and approved by the appropriate Governmental Authorities as evidenced by issuance of a certificate of Substantial Completion, for Owner's occupancy or partial occupancy for its intended purposes, excluding only minor portions of the Work that remain unfinished pending Final Completion and final inspection. Partial use or occupancy shall not result in the Project being deemed substantially complete and shall not be evidence of substantial completion, nor shall execution of a certificate of Substantial Completion be deemed to excuse unidentified or uncorrected defects in the Work or services of a service provider.

1.1.82. *Substantial Completion Inspection* means the process and procedure described in UGC, Subsection 12.1.1.

1.1.83. *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 CMR that CMR has fully satisfied the requirements set out in UGC, Paragraph 12.1.1.1, and by which date A/E must conduct a Substantial Completion Inspection.

1.1.84. *TDLR* means the Texas Department of Licensing and Regulations.

1.1.85. *TFC Project Manager(s)* means the employee(s) of TFC authorized and assigned to communicate with and act on TFC's behalf to administer A/E's Agreement, and to manage and oversee the Project Team in connection with the Projects. An individual designated as a TFC Project Manager pursuant to this Agreement is authorized to act on behalf of TFC with respect to the day-to-day management of the Services required under this Agreement, inclusive of managing TFC's review and Approval of the Professional Services and operating as the point of contact between TFC, the Using Agency (if any), and A/E.

1.1.86. *Using Agency* has the same meaning as defined in Texas Government Code, Section 2166.001(10) (West 2016).

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

1.1.88. *Utility Providers* means any and all entities that provide Utilities to the Project.

1.1.89. *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.

1.1.90. *Warranty Report Deadline* means the date that is three hundred thirty-five (335) days after the date that a Certificate of Substantial Completion has been issued as to the Work, or a discrete portion thereof, and by which date A/E shall deliver the warranty and guarantee phase services.

1.1.91. *Work* means the physical construction and related services required by the Construction Documents to construct each Phase of the Project, and includes all other labor, materials, equipment and services provided or to be provided by CMR to fulfill CMR's obligations. The Work may constitute the whole or a part of the Projects.

1.1.92. *Work Product* shall mean all work product, including all instruments of service, submittals, Drawings, Specifications, Project Manuals, documents, plans, data compilations or calculations, Building Information Models, studies, reports, or other documents, and all ideas incorporated therein, and all intellectual property rights associated therewith, which are prepared by or on behalf of any Service Provider, in connection with the Projects or in connection with the performance of the Services or Additional Services hereunder, which Work Product shall, except as otherwise set forth in this Agreement be and remain the property of TFC, and shall only be used by A/E in a manner strictly adhering to A/E's limited use and ownership rights as set forth in this Agreement.

1.1.93. *Worksite(s)* has the same meaning as the defined term "Site(s)," as set forth in Section 1.1.75, above.

II. SCOPE OF SERVICES.

2.1. Description of Project.

2.1.1. Professional Services for the Pedestrian Mall and Underground Parking Garage. .The Project includes professional architectural and engineering services for design development, construction documents, construction administration, Building Information Model to Facilities Management ("BIM to FM") services, and warranty management for a new Pedestrian Mall and five levels of underground parking. AE shall utilize the conceptual plans and bridging documents provided by the Master AE in preparation of the documents.

2.1.2. Site. The Project is Package 6 of the Capitol Complex Phase 1, and is located at three vacated blocks of Congress Avenue between 16th Street and Martin Luther King, Jr. Boulevard in Austin, Texas.

2.2. Scope of Services. A/E agrees to timely deliver the Professional Services described below and in the Detailed Scope of A/E's Services, incorporated herein for all purposes as "Exhibit I," pursuant to the Professional Services Schedule. Deliverable package shall include sealed architectural and engineering design document package for bidding, permitting and construction. A/E's Services shall include provision of all documents required for permitting including but not limited to: SWPPP, street and sidewalk closures, encroachment agreements, and traffic control, as related to the Pedestrian Mall and Underground Parking Garage. AE services shall include plan review and inspections by a Registered Accessibility Specialist as required by the Texas Accessibility Standards. A/E shall provide the required BIM to FM services, attached hereto and incorporated herein for all purposes as "Exhibit J."

2.2.1. The scope of services includes the following portions of the Project:

2.2.1.1. All landscaping, hardscaping, and site improvements for the Pedestrian Mall north of the Capitol, at three vacated blocks of Congress Avenue, between 16th street and MLK Jr. Boulevard, including architectural portals for stairs and elevators to the garage below.

2.2.1.2. All landscaping, hardscaping, and site improvements for the plaza directly west of the new building at 1801 Congress Avenue, including an amphitheater and all related improvements.

2.2.1.3. The contiguous, five-floor below-grade consolidated parking facility beneath the three blocks of the Pedestrian Mall.

2.2.1.4. Blind side waterproofing for the Underground Parking Garage.

2.2.1.5. Incidental excavation such as for utility connections, perimeter beams, elevator pits, etc.

2.2.1.6. Entrance ramps from 17th Street to the Underground Parking Garage

2.2.1.7. Landscaping and site improvements up to the building lines of the new buildings at 1601 and 1801 Congress.

2.2.1.8. Coordination with AEs and CMRs on Package 2 (Utility Relocation) for utilities crossing above the parking garage.

2.2.1.9. Coordination with AEs and CMRs on Package 2 for the re-configuration of 16th, 17th, and 18th streets from one way to two way, and the associated traffic signalization.

2.2.1.10. Coordination with AEs and CMRs on Package 3 (Central Utility

Plant and Underground Utility Tunnel) for tunnel connections and chilled water piping.

2.2.1.11. Coordination with AEs and CMRs on Package 4 (1801 Congress) and Package 5 (1601 Congress) to ensure integrated building systems across all packages.

2.2.2. Project Exclusions. The following items are not included in scope of services.

2.2.2.1. Major excavation of basement.

2.2.2.2. Utility relocation.

2.2.2.4. Loose building furnishings.

2.3. General Duties for Performance of Services.

2.3.1. A/E shall furnish or provide the architectural and engineering Services necessary and/or reasonably inferable from this Agreement (regardless of whether expressly described herein) and all other relevant data for the successful design and construction of the Pedestrian Mall and Underground Parking Garage., in accordance with TFC's requirements, as outlined in TFC's relevant data defining the Project. The Professional Services shall include Basic Services, plus Additional Services as may be authorized by TFC.

2.3.2. A/E shall, in accordance with its Standard of Care, verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied by TFC and other members of the Project Team to A/E prior to being used by A/E in the performance of the Services. Failure to notify TFC of any inaccuracies shall be considered a waiver of liability for such inaccuracies.

2.3.2. A/E's Services, including all Deliverables of A/E, shall be accurate and free from material errors and/or omissions in accordance with its Standard of Care. Upon notice, A/E shall promptly correct any known or discovered error, omission, or other defect without any additional cost or expense to TFC.

2.3.3. A/E understands and acknowledges that A/E has assumed the contractual obligation to Owner to advise and assist Owner in connection with the architecture and engineering for the Project. Unless otherwise directed by Owner, the communications of A/E with respect to the Services shall be directed to Owner. Nothing in this Contract shall be construed to limit or restrict the right of Owner to communicate directly with any service provider at any time. Owner expressly reserves such right hereunder, which right Owner intends to expressly reserve in all of Owner's contracts with the service providers. In no event shall Owner's election to initiate any such communication be deemed or construed to be an interference with the contractual relationship or rights of A/E or any service provider, or an abrogation of any rights of Owner under this Contract.

2.3.4. A/E understands and acknowledges that the Project will be constructed in a multi-phased manner requiring and construction phase Services to be performed contemporaneously in connection with the development, issuance, and execution of multiple Construction Packages. At a minimum, the Construction Packages presently contemplated by Owner are as follows:

2.3.4.1. Package 6A: Early structural package for below grade concrete garage foundations and structure;

2.3.4.2. Package 6B: Architectural portals and amphitheater structures; and

2.3.4.3. Package 6C: Site finishes for final landscaping and hardscaping.

2.3.5. A/E shall develop each Design Package pursuant to the requirements set forth for each successive phase of design described herein, including submission of interim submittals and design documents to TFC for review in accordance with the Owner Coordinated Document Review Process, Section 2.7, below.

2.3.6. A/E shall follow the Program Management Plan ("PMP") established by the CMA, including but not limited to the following:

2.3.6.1. communication protocols;

2.3.6.2. procedures for budget management and monthly reporting;

2.3.6.3. schedule management procedures;

2.3.6.4. quality assurance/ construction inspection procedures;

2.3.6.5. procedures for filing systems

2.3.6.6. procedures for correspondence and transmittals;

2.3.6.7. procedures for requests for information;

2.3.6.8. protocols for submittals;

2.3.6.9. procedures for meetings;

2.3.6.10. procedures issues tracking;

2.3.6.11. procedures for reporting (weekly/monthly);

2.3.6.12. protocols for record/document management;

2.3.6.13. Project closeout procedures;

2.3.6.14. safety procedures;

2.3.6.15. protocols for design and cost reviews;

2.3.6.16. commissioning procedures; and

2.3.6.17. project scheduling, sequencing, phasing and partitioning plans and information.

2.3.7. The PMP has been developed by the CMA with the Master A/E's assistance in cooperation and consultation with Owner with the objective of: (i) ensuring adherence to the design integrity established in the Design Program, the Master Plan, and Owner's Project Requirements, a digital copy of which is contained on the Exhibits CD and incorporated herein for all purposes as "Exhibit K" (hereinafter referred to as "OPR"); (ii) optimizing opportunities for Owner to reduce Project costs; and (iii) reducing Project delivery schedules to the extent reasonably and commercially possible.

2.4. Pre-Design Phase. No later than the Pre-Design Deadline, A/E shall timely deliver the following Pre-Design Tasks to TFC.

2.4.1. Consult with TFC staff, and become thoroughly familiar with: (i) the Conceptual Plans; (ii) the Design Program; (iii) the Master Plan; (iv) and (vi) the OPR.

2.4.2. Inspect and timely become thoroughly familiar with the Site for the Project.

2.4.3. Review and become thoroughly familiar with any and all relevant and existing Project, Site, and facilities studies and information, including geotechnical reports and recommendations.

2.4.4. Review and become thoroughly familiar with the Budget proposed by TFC and advise 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 Phase 1 of the Project as contemplated. If, in the opinion of A/E, the Budget is adequate, A/E shall confirm in writing its ability to prepare the DD 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. 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.

2.4.5. Review and become thoroughly familiar with the Integrated Master Schedule and advise TFC if, in the opinion of A/E, the schedule is adequate in sequence and duration to allow for timely design and construction of the Project. A/E shall confirm its schedule to this reconciled schedule.

2.4.6. Confirm all codes, rules, regulations and all other Site-related requirements identified by the Master A/E.

2.4.7. Receive and become familiar with requirements of the technical and design standards of TFC and the Using Agency, including, but not limited to, A/E Guidelines, Master Plan, Design Guidelines, and OPRs.

2.4.8. Determine and identify to TFC which additional Subcontractor(s), 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, if any such Subcontractors have not been identified by A/E in its List of A/E's Key Personnel, "Exhibit D."

2.4.9. Implement the CAD and BIM systems, the BIM Protocols, incorporated herein for all purposes as "Exhibit L," pursuant to the BIM Plan and the EPMCS which have been established by the CMA.

2.4.10. In coordination with the Master AE, deliver a Design Task Report to TFC. Upon consent of TFC, A/E may deliver one (1) amendment to the Design Task Report no later than the Design Deadline.

2.5. Owner Coordinated Document Review Process. A/E agrees to timely deliver the "Owner Coordinated Document Review Process" as follows.

2.5.1. During the design phase of the Project, the design schedule shall accommodate a periodic review of the Construction Documents at various milestones, to be coordinated by TFC, at the following milestones and in the sequential order listed: Design Development; 65% Construction Documents; 95% Construction Documents; and 100% Construction Documents.

2.5.2. Each review shall include the following steps to comprise a complete review for each milestone listed above.

2.5.2.1. A/E shall have a fixed number of days after TFC's notice of authorization to A/E to proceed with the next phase of design. The fixed number of days for development of each phase of design shall be established by the PMP.

2.5.2.2. TFC, A/E, Master A/E, CMA and CMR shall meet to review the milestone submittal, five (5) calendar days or the first weekday thereafter following A/E deadline.

2.5.2.3. The formal review comments and deadline is the date occurring five (5) calendar days or the first weekday thereafter following the review meeting upon which the CMA, in collaboration with the TFC and the Master AE, shall prepare and deliver comments to A/E and CMR; and CMR shall prepare and deliver CMR's comments to TFC and A/E.

2.5.2.4. A/E reply and deadline is the date occurring five (5) calendar days or the first weekday thereafter following A/E's receipt of formal review comments upon which A/E shall provide written evidence that, in TFC's sole discretion, resolves all formal comments.

2.5.2.5. If updates to the CMA's cost estimate exceed the Budget by more than 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 and CMA to identify potential design and/or Specification modifications that could result in the cost estimate being in compliance with the Budget. A/E shall incorporate Approved modifications into A/E's design documents and shall promptly submit such modified design documents to TFC without causing delay to the Project and without any cost to TFC.

2.6. Design Development Phase.

2.6.1. Upon receipt of the Conceptual Design Documents from the Master AE, and upon receipt of Notice to Proceed from TFC, A/E shall prepare and deliver the design development phase documents to TFC for review and approval via the Owner Coordinated Document Review Process.

2.6.2. It is acknowledged and agreed that A/E may continue to develop the drawings at the risk of being required to make changes until a Design Development–TFC NOA is delivered by TFC.

2.6.3. A/E shall proceed to the Construction Document Phase once review comments and project cost estimates for the Design Development Phase are reconciled and TFC delivers a Notice of Authorization to proceed with Construction Documents.

2.6.4. All DD Documents must comply with all Laws and Regulations of all Governmental Authorities.

2.6.5. Such DD 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:

2.6.5.1. design criteria for any grade and subgrade Site preparation and erosion control required by any Governmental Authorities;

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

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

2.6.5.4. 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.

2.6.6. Submission of all documents required by TDLR, as TFC's authorized agent, and obtain TDLR's determination of whether the Project is designed in compliance with applicable requirements of TDLR. A/E shall immediately deliver a copy of any determination of compliance or noncompliance by TDLR to TFC.

2.6.7. A/E shall proceed to develop the 65% Construction Documents once review comments and project cost estimates for Design Development are reconciled and TFC delivers a Notice of Authorization to proceed with development of the 65% Construction Documents.

2.7. Construction Documents Phase.

2.7.1. No later than the 65% Construction Documents–A/E Deadline, prepare and deliver the 65% Construction Documents to TFC for review and approval via the Owner Coordinated Document Review Process.

2.7.1.1. A/E shall proceed to develop the 95% Construction Documents once review comments and project cost estimates for the 65% Construction Documents are reconciled and TFC delivers a Notice of Authorization to proceed with development of the 95% Construction Documents.

2.7.1.2. No. later than the 95% Construction Documents–A/E Deadline, prepare and deliver the 95% Construction Documents to TFC for review and approval via the Owner Coordinated Document Review Process.

2.7.1.3. A/E shall proceed to develop the 100% Construction Documents once review comments and project cost estimates for the 95% Construction Documents are reconciled and TFC delivers a Notice of Authorization to proceed with development of the 100% Construction Documents.

2.7.1.4. No later than the Construction Documents–100% A/E Deadline,

A/E shall prepare and deliver to TFC:

2.7.1.4.1. the proposed one hundred percent (100%) complete Construction Documents; and

2.7.1.4.2. review of CMR's Construction Documents-100% cost estimate. If such estimate exceeds the Budget, A/E shall consult with TFC to identify further potential design and/or Specification modifications that could result in the estimate being in compliance with the Budget. Approved modifications to reduce the estimated construction cost of Phase I of the Project to within the Budget shall be incorporated by A/E into the Construction Documents at no cost to TFC and without delay to the Project.

2.7.1.5. Each of A/E's Deliverables shall be submitted electronically in a format acceptable to TFC, and shall be appropriately labeled to include identification of the software program (and version thereof) utilized for each Deliverable.

2.7.1.5.1. All Drawings shall be organized within the layering system in accordance with A/E Guidelines.

2.7.1.5.2. Layer format and names shall be in accordance with A/E Guidelines.

2.7.1.5.3. 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.

2.7.1.5.4. The construction of the Project will be divided into different Project Stages each with different dates for implementation and completion under separate Guaranteed Maximum Price contract amendments or separate contracts, which require Architect/Engineer's issuance of multiple Design Packages pursuant to Section 2.3.4.

2.7.1.5.5. A/E shall sign, seal and date, and shall cause the responsible architect(s) and engineer(s) to sign, seal and date, all documents, reports, Drawings and Specifications issued to TFC pursuant to the terms of this Agreement and in accordance with applicable Laws and Regulations. With the signing and sealing of the Construction Documents the AE shall accept complete responsibility for these documents.

2.7.1.5.6. The Deliverables issued by A/E must comply with all Laws and Regulations.

2.7.1.5.7. 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.

2.7.1.5.8. A/E shall submit all documents required to secure approval of all Governmental Authorities. All requests for reimbursement for any direct costs associated with submitting documents to such authorities and for permit fees shall be governed by Article IV of this Agreement.

2.7.1.5.9. No Construction Documents shall be issued, delivered, or released for any purpose without the prior written consent of TFC.

2.8. Contract Bidding and Award Phase. Upon receipt of an applicable written authorization to proceed, and only in such event, A/E shall prepare and deliver to TFC the following contract bidding and award phase services for the Project:

2.8.1. 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.

2.8.2. Throughout the course of design and construction of the Project, A/E shall provide TFC with continuous access to the BIM and shall transfer each BIM to TFC's server at Substantial Completion of the Project. At completion of 100% Construction Documents, A/E shall provide annotation files (or the equivalent thereof for the building information modeling software used) for TFC's review. At completion of each Project Stage, A/E shall provide annotation files (or the equivalent thereof for the building information modeling software used) for the record drawings to TFC.

2.8.3. Assist TFC in the bidding and award phase by delivering the following services:

2.8.3.1. Prepare any addenda, amendments, and the like, to the solicitation documents which may become necessary.

2.8.3.2. Attend and participate in the evaluation and scoring of all proposals in accordance with TFC processes and procedures, including, but not necessarily limited to, interviewing of bidders, which participation shall be at no additional cost to TFC and shall not constitute an Additional Service.

2.8.3.3. If the lowest acceptable proposal price, 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 and CMR, in order to identify further potential design and/or Specification modifications which could result in obtaining a proposal price that would be in compliance with the Budget. Approved modifications shall be incorporated into the Construction Documents and appropriate copies reissued at no cost to TFC.

2.8.3.4. In the event TFC elects to amend the Budget and allocate such

additional funds as necessary to accommodate the lowest acceptable proposal and the Project proceeds, there shall be no increase in the amount of the Consideration.

2.8.3.5. In the event A/E receives any inquiries whatsoever from bidders or potential bidders regarding the Project, A/E must immediately 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 immediately forwarded to TFC for response.

2.9. Construction Phase–General Administration of Construction Contract. A/E shall deliver the following management and administration of construction contract(s) services to TFC during the construction phase of the Project as is specified in the UGC and as follows:

2.9.1. Perform professional observation and review of the Work in order 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:

2.9.1.1. designate and provide an on-site representative for the duration of the construction of the Project who shall perform observations of all completed and in-progress Work on a weekly basis, or in such other frequency as established by the PMP;

2.9.1.2. such observations shall include, but shall not be limited to, all functions applicable to professional inspections that are described in Texas Government Code, Sections 2166.351(3) and 2166.355 (West 2016);

2.9.1.3. no later than the RFI Response Deadline as established in the PMP, prepare and deliver an RFI Response for each RFI via the EPMS. If the subject of the RFI cannot be reasonably answered by this deadline, 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 CMR's questions and RFIs in the shortest timeframe possible in order to collaborate in the prosecution of CMR's Work (as defined in UGC, Section 1.48) on a schedule that recognizes that "TIME IS OF THE ESSENCE";

2.9.1.4. conduct timely contract management and administration activities as required herein by utilization of the EPMCS; and

2.9.1.5. timely review and deliver to TFC and CMR complete responses within the specified deadlines to the submittals described below. If the deadline cannot be met, A/E shall so advise TFC and CMR, and propose an alternative deadline and the basis for such proposal, the acceptance of which shall be within the sole discretion of TFC. A/E shall make reasonable efforts to review submittals in the shortest timeframe possible to collaborate in the prosecution of CMR's Work on a schedule that recognizes that "TIME IS OF THE ESSENCE";

2.9.1.5.1. submittals—within fourteen (14) calendar days after receipt;

2.9.1.5.2. Pay Applications—within five (5) calendar days after receipt;

2.9.1.5.3. proposed change orders and unilateral change orders—within five (5) days after receipt;

2.9.1.5.4. certification for payment—each and every certification for payment issued by A/E shall constitute an express representation that based upon A/E's on-site observation(s) and an evaluation of CMR's Pay Application and A/E's knowledge and belief: (i) the construction has progressed to the point indicated in the Application for Payment, and in general conformity with the Contract Documents; and (ii) A/E has received and reviewed and evaluated all testing reports required by the Contract Documents up to the respective Pay Application. A/E's certification of payment for a discreet or partial completion of the Work does not relieve CMR of its obligation to fulfill all contractual obligations.

2.9.1.6. Prepare such amended or revised Drawings and/or Specifications as necessary to fully and accurately reflect any Approved changes.

2.9.1.7. Deliver said amended or revised Drawings and/or Specifications to CMR and request a price proposal.

2.9.1.8. Thereafter, A/E shall review CMR's proposal and recommend approval or disapproval to TFC.

2.9.1.9. Timely update all Construction Documents as may be necessary to accurately reflect conditions resulting from approved Change Orders so as to enable timely delivery of complete and accurate Record Documents.

2.9.1.10. Deliver 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:

2.9.1.10.1. the completed Work in relation to the Work Progress Schedule;

2.9.1.10.2. projected completion dates;

2.9.1.10.3. percentage of completion of each discrete subpart of the Work;

2.9.1.10.4. any existing or potential deficiencies and/or discrepancies;

2.9.1.10.5. the status of any revisions or Change Orders; and

2.9.1.10.6. the status of the Record Documents.

2.9.1.11. Subject to the provisions of UGC, Subsection 12.1.1, no later than the Substantial Completion Inspection Deadline, A/E shall conduct a Substantial Completion Inspection of the Work, while accompanied by the TFC Project Manager, the CMA, the Master AE and CMR, to determine whether said portion of the Work has achieved Substantial Completion.

2.9.1.12. In the event TFC, the CMA, the Master AE 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, no later than the Pre-Final Inspection Punchlist Deadline, a Pre- Final Inspection Punchlist to CMR with a copy to TFC.

2.9.1.12.1. A/E shall continue to perform the foregoing described service until TFC can issue an appropriate Certificate of Substantial Completion.

2.9.1.12.2. In the event that such continued service be required due to causes outside A/E's direct control (such as, CMR's errors in reporting readiness of the Work for Inspection; CMR prematurely requesting substantial completion inspection; significant deficiencies in the Work unexcused delays in the Work; untested or improper performance of systems; or similar failures performed by CMR or its agents), such service shall constitute an Additional Service.

2.9.1.13. In the event A/E, the CMA, the Master AE, 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, Paragraph 12.1.1.2, and 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 requirements of TDLR including, but not limited to, obtaining a passing inspection by 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 Post-Substantial Completion Inspection Punchlist cannot or, in all reasonable likelihood will not be, satisfactorily completed within thirty (30) days of the date of the Substantial Completion Inspection Deadline.

2.9.1.14. Subject to the provisions of UGC, Subsection 12.1.2, and no later than the Final Inspection Deadline, A/E shall conduct a Final Inspection of the Work, while

accompanied by the TFC Project Manager, CMA, the Master AE, and CMR, to determine whether all of the Work for the entire Project has been fully completed in accordance with the Construction Documents.

2.9.1.15. In the event TFC, CMA, the Master AE, and A/E conclude that any of the Pre-Final Inspection Punchlist items have not been corrected or completed in accordance with the Construction Documents, A/E shall prepare and deliver, no later than the Post-Final Inspection Punchlist Deadline, a Post-Final Inspection Punchlist to CMR with a copy to TFC.

2.9.1.16. A/E shall continue to perform the foregoing described service until TFC can issue a Certificate of Final Completion.

2.9.1.16.1. In the event that such continued service be required due to causes outside A/E's direct control (such as, CMR's errors in reporting readiness of the Work for Inspection; CMR prematurely requesting substantial completion inspection; significant deficiencies in the Work; unexcused delays in the Work; untested or improper performance of systems or similar failures performed by CMR or its agents), such service shall constitute an Additional Service.

2.9.1.16.2. In the event A/E, CMA, the Master AE, 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 subject to the prior issuance of a Certificate of Substantial Completion, TFC, with A/E signature as appropriate, shall issue and deliver a Certificate of Final Completion to CMR.

2.9.1.16.2.1. Issuance of a Certificate of Substantial Completion is a condition precedent to CMR's right to issue notice that the Work will be ready for final inspection.

2.9.1.16.2.2. Issuance of a Certificate of Final Completion is a condition precedent to CMR's right to receive Final Payment.

2.9.1.17. No later than the Close-out and Record Documents Deadline, and prior to A/E's delivery of the Application for Final Payment to TFC, A/E shall:

2.9.1.17.1. Obtain, review and inspect all Close-out Documents, guarantees, bonds and all other fiscal surety instruments, and all other documentation required of CMR 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.

2.9.1.17.2. Furnish the Record Documents to TFC.

2.9.1.17.3. Furnish one (1) digital copy of all Construction Documents

to TFC including the BIM Model and annotation files used to create the Construction Documents, in the format and version approved by TFC.

2.9.1.17.3.1. Each portable drive or disk shall be appropriately labeled to include identification of the software program (and version thereof) utilized.

2.9.1.17.3.2. Drawings shall be annotation files referencing the BIM and shall be organized within the layering system in accordance with A/E Guidelines.

2.9.1.17.3.3. Layer format and names shall be in accordance with A/E Guidelines.

2.9.1.17.3.4. 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.

2.9.1.18. Subject to the restrictions set out below, 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.

2.9.1.18.1. In order for an Application for Final Payment to be considered complete and subject to approval, CMR must submit a fully executed Final Payment checklist in such form as is prescribed by TFC to TFC.

2.9.1.18.2. No approval of an Application for Final Payment is valid and enforceable unless and until the foregoing subparagraph is fully satisfied.

2.9.1.19. 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, 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.

2.10. A/E Services During 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.

2.10.1. Critically review and closely scrutinize all documents submitted by all third parties.

2.10.2. Thoroughly review and closely scrutinize the performance, schedules, and costs of CMR and all its subcontractors.

2.10.3. Critically review and evaluate CMR's proposed schedule and costs as relevant to each consultant's discipline.

2.10.4. Maintain work progress and products consistent with the schedules.

2.10.4.1. Provide supplemental information beyond that presented in a submission of documents which may be reasonably requested to assist cost estimating.

2.10.4.2. Promptly communicate with pertinent parties, including topics regarding information needs and responses to needs of other parties.

2.10.4.3. 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.

2.10.4.4. 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.

2.10.4.5. Answer questions and provide clarifications for CMR 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; and

2.10.4.6. Ensure that A/E Project Manager and any other representative of A/E whose presence is requested by TFC attend all meetings and participate in all conference calls that are scheduled by TFC.

2.11. Release of Electronic Files. A/E shall, as a part of its Services, provide or cause to be provided to CMR and its subcontractors, upon CMR's request, electronic access to such BIM data and electronic files comprising the Construction Documents as is reasonably necessary and appropriate to enable their use of such data and files in connection with the Project. A/E shall provide such access in an executed Acknowledgement of Data Use Protocols, form to be provided by TFC.

2.12. TFC Approvals. Any provisions in this Agreement to the contrary notwithstanding, all consents and/or approvals by TFC shall be in its sole and absolute discretion, and must be in writing.

2.12.1. No changes to: (i) the scope of the Professional Services; or (ii) the Consideration shall be valid or enforceable unless evidenced by a fully executed written amendment to this Agreement.

2.12.2. A/E is not authorized to commence providing any Professional Services to TFC or

any Using Agency with respect to the Project unless and until an appropriate Notice to Proceed is delivered by TFC.

2.12.3. TFC, including by and through the TFC Project Manager, reserves the right to extend any of the deadlines set out above.

2.13. Inspections. TFC hereby reserves the right, if deemed appropriate by TFC in its sole discretion, to conduct reviews or inspections during the course of planning, pre-design, design, construction and commissioning of the Project, and to require A/E to participate therein. However, such participation shall not relieve A/E of any of its obligations arising pursuant to this Agreement. No inspections of the Project conducted 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, the payment of any Pay Application by TFC shall constitute, nor 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 pursuant to the terms of this Agreement. Owner anticipates engaging other independent professionals to provide peer reviews at the conclusion of the Schematic Design, Design Development and Construction Documents Phases for each Design Package issued by A/E. A/E shall incorporate modifications to its design documents in connection with any peer review without additional cost to Owner.

III. TERM AND TERMINATION.

3.1. Duration. This Agreement shall be effective as of the Effective Date and shall terminate on May 25, 2023, unless extended by the parties by amendment to this Agreement or terminated earlier, as provided below.

3.2. Suspension, Default, and Termination.

3.2.1. Suspension by Owner for Convenience. Owner may at any time order A/E to suspend its services on the Project for the convenience of Owner. Any such suspension shall not terminate or void this Agreement.

3.2.2. Termination by Owner for Convenience. Owner shall have the right at any time and for any reason to terminate for convenience this Contract and any one or more tasks, in whole or in part, by giving written notice to A/E. Upon receipt of Owner's order or notice, A/E shall immediately discontinue services as directed therein, except as expressly directed otherwise therein. A/E shall thereafter do only such services and work as may be necessary to preserve and protect work already completed. In case of such termination, A/E shall be entitled to payment only for services and work satisfactorily performed prior to termination and reasonably performed thereafter in closing out any task in accordance with such notice. The foregoing shall be the sole remedy available to A/E in the event of such termination by Owner. In no event shall A/E be entitled to payment of lost profits, lost opportunity or any damages relating to services not performed due to such termination. Owner's right to terminate as provided herein shall not be

construed as affecting in any way the rights, duties or obligations of the parties should Owner terminate this Contract for cause upon A/E's breach or default.

3.2.3. Termination by Owner for Cause.

3.2.3.1. Owner may terminate the Contract if A/E, despite written notice from Owner, and the expiration of ten (10) days after the receipt of such notice:

3.2.3.1.1. refuses or fails to supply enough properly skilled personnel;

3.2.3.1.2. fails to make payment to A/E Personnel for services in accordance with the respective agreements between A/E and A/E Personnel;

3.2.3.1.3. disregards Applicable Law;

3.2.3.1.4. commits a substantial breach of any provision of this Agreement;

3.2.3.1.5. fails to furnish Owner, upon request, with assurances satisfactory to Owner evidencing A/E's ability to complete the Services in compliance with all the requirements of this Agreement; or

3.2.3.1.6. fails to proceed continuously and diligently with the Services, except as otherwise excused under this Agreement.

3.2.3.2. When any of the above reasons exist, Owner may, without prejudice to any other rights or remedies of Owner, which rights and remedies are expressly reserved herein, terminate the Agreement with A/E and: (i) take possession of all Work Product in the possession of A/E; (ii) accept assignment of subcontracts pursuant to this Agreement; and (iii) complete the Services by whatever reasonable method Owner may deem expedient.

3.2.3.3. In addition to the foregoing, if Owner at any time has reasonable grounds to believe that A/E is in default, or likely to default, in the performance of its obligations under this Agreement, Owner may request in writing, and A/E shall provide to Owner in writing within ten (10) days after receipt of Owner's request, adequate assurance of A/E's present and future ability to perform its obligations, failing in which A/E shall be deemed to be in material default of this Agreement. A/E's written response to such request shall include evidence sufficient to demonstrate A/E's ability to perform to the reasonable satisfaction of Owner. Owner's determination that A/E has failed to provide evidence sufficient and satisfactory to constitute adequate assurance of its ability to perform hereunder shall not be subject to challenge if A/E has failed to cure, within the time permitted under Section 3.2.3.1, a condition of default specifically referenced in Owner's written demand to cure such condition of default.

3.2.3.4. If, in the event of a termination for cause, the unpaid balance of all compensation remaining to be earned by A/E under this Agreement exceeds the sum of the cost of finishing the Services, including compensation for the services and expenses of Owner and CMR that are made necessary by A/E's default, and any other damages incurred by Owner as a result thereof, and not expressly waived, such excess shall be paid to A/E. If such costs and damages exceed such unpaid balance, A/E shall be liable to pay the difference to Owner, which amount shall be immediately due and owing to Owner. This obligation for payment shall survive termination of this Agreement.

3.2.3.5. Upon determination by Court of competent jurisdiction that termination of A/E pursuant to this Section 3.2.3 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 3.2.2 and A/E's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth therein.

3.2.4. Selection of another A/E. In the event of any termination of this Contract by Owner, in whole or in part, A/E consents to Owner's selection of another to serve as A/E of Owner's choice to assist Owner in completing the Project. Upon termination for any reason whatsoever, however, A/E shall promptly deliver to Owner all information, including all electronic documents, in A/E's possession relating to the Design Program and the Project. A/E further agrees to cooperate and provide any further information requested by Owner in connection with the completion of A/E's obligations with respect to the Design Program and the Project.

3.2.5. No Payment for Unsatisfactory Work. Nothing contained in this Section 3.2 shall require Owner to pay for any services or work under the terms of this Agreement which are unsatisfactory or which are not submitted in compliance with the terms of this Agreement. Owner shall not be required to make any payments to A/E when A/E is in default under this Agreement, nor shall this Article constitute a waiver of any right, at law or at equity, which Owner may have if A/E is in default, including the right to: (i) terminate this Agreement; (ii) bring legal action for damages; or (iii) enforce specific performance of this Agreement. Nothing in this Agreement shall be construed as a waiver by Owner of its right to assert a claim for breach of contract with respect to any breach hereof, including any latent defect in A/E's Services, if the same was not actually discovered by Owner in sufficient time to report the same to A/E prior to expiration of the Contract Term or prior to TFC's termination of this Agreement for any reason.

IV. CONSIDERATION.

4.1. Contract Limit–Fees and Expenses.

4.1.1. Fixed Fee. In exchange for the proper performance and timely delivery of the Professional Services as specified by this Agreement, A/E shall be paid a fixed fee of Six Million Two Hundred Eighty-Six Thousand Seven Hundred and No/100 Dollars ($6,286,700.00). A/E

will not be compensated for any Professional Services performed or delivered by A/E prior to the Effective Date of this Agreement or after its termination. Such Fixed Fee shall be paid to A/E pursuant to the A/E's Fee Schedule and Staffing Plan, "Exhibit E."

4.1.2. Submission of Pay Applications or Invoices. No more frequently than once per month, A/E shall submit a Pay Application 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 Chapter 2251 of the Texas Government Code (West 2016), also known as the "Prompt Payment Act."

4.2. Proportional Payments. Payments shall be made to A/E monthly in proportion to the services performed. The compensation for services shall be at the cumulative percentages at the completion and acceptance of each phase of the Professional Services in accordance with the A/E's Fee Schedule and Staffing Plan, "Exhibit E."

4.3. Maximum 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 Textravel, *https://fmx.cpa.state.tx.us/fmx/travel/textravel/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 Professional 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 TFC, allows for complete substantiation of the costs incurred.

4.4. Notice of Depletion. Within seven (7) days of when the accumulated amount of Fees and Reimbursable Expenses reaches eighty percent (80%) of the maximum not-to-exceed contract amount(s), A/E shall deliver written notice thereof to TFC. Nothing herein shall be construed to require TFC to increase the approved maximum not-to-exceed contract amount(s) established pursuant to this Agreement.

4.5. 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 the Hourly Rates established by "Exhibit G." Any Additional Services performed or delivered by A/E prior to execution of the Agreement or amendment thereto, as applicable, cannot be compensated. The Additional Services Hourly Fee Rates established in "Exhibit G" may upon request of A/E be reviewed on a biennial basis to determine the appropriateness of any increases or decreases thereto for cost of living and merit adjustments. At least 10 days prior to seeking Owner's approval of any adjustment to any Additional Services Hourly Fee Rates to be applied to any A/E Personnel, A/E shall submit to Owner the qualifications, experience and performance evaluations of all such A/E Personnel who are the subject of a requested adjustment. A/E shall submit its proposal for such adjustments at least sixty (60) days in advance of such anniversary date for Owner's review. Owner's approval of such adjustments shall not be unreasonably withheld; provided, however, Owner may, as a condition of such approval, require A/E to submit to a wage study to be conducted by a qualified independent third party mutually acceptable to both parties, to confirm the appropriateness thereof. Owner and A/E shall share the cost of any such study. Owner shall be entitled to reduce any adjustment requested by A/E to such lesser amount as may be confirmed by such wage study to be reasonable. In no event shall Owner be required to approve a biennial cost of living adjustment that exceeds the amount of the average annual cost of living adjustment, if any, approved by TFC for TFC's employees for the calendar year in which such adjustment is sought.

4.6. Equitable Adjustment to Fees and/or Schedule for Extended Performance Due to Owner's Interference. A/E may, as hereinafter provided, claim an equitable adjustment to its Fees for extended performance that A/E demonstrates to have been caused by Owner's act of intentional interference with A/E's performance of this Agreement. An "Owner's act of intentional interference" shall be an act of Owner that impacts the performance of, or extends the time of A/E's performance of the Services: (i) which causes A/E's performance to be impacted or extended without any reasonable justification therefor; (ii) resulting in impacted or extended performance that would not have occurred but for such act of interference; and (iii) as to which A/E has delivered to Owner written notice of the occurrence, impact consequences, and recommendations for the elimination of such act of intentional interference, and Owner, with specific intent and without reasonable justification, fails or refuses thereafter to cease, or cause to be ceased, such act of intentional interference. In such case and subject to Section 4.6.1 below, A/E may claim, and Owner's liability shall be limited to, an equitable adjustment to its Fees for A/E's reasonable additional costs of impacts or extended performance during the period of A/E's extended performance commencing on the business day next following Owner's receipt of such notice and ending on the day that such act of intentional interference ends.

4.6.1. Written Notice. In any such event, A/E shall deliver the written notice required above within forty-eight (48) hours of the commencement of an Owner's act of intentional interference, A/E's failure of which shall constitute, without further notice or action, a waiver of A/E's right to claim an adjustment of its fees for such act of intentional interference.

4.6.2. No Adjustment for Failure to Perform. In no event shall A/E's Fees be equitably adjusted for delays to the Design Program or Project which A/E caused or contributed to in any way by failing to perform its Services required hereunder in accordance with its Standard of Care.

4.7. Payments to Subcontractors. For all services rendered, A/E's payment to Subcontractors is due within ten (10) days after receipt of payment from TFC and, when appropriate in the sole discretion of TFC, TFC may issue joint checks to A/E and Subcontractors.

4.8. Certification of Correctness. Each submission of a Pay Application shall constitute A/E's representation to TFC that the Services and reimbursable expenses reflected thereon have been fully rendered or incurred in accordance with this Contract, and that payment of the indicated amount has been earned by, and is properly due and payable to, A/E in accordance with this Contract. Notwithstanding the foregoing, the amount reflected on any Pay Application shall only be due and payable to A/E to the extent such payment has actually been earned by A/E in accordance with this Contract.

4.9. Right to Withhold Payment. Notwithstanding anything in this Contract to the contrary, TFC shall not be obligated to make, and may withhold interest free, any payment to A/E under this Contract if any one or more of the following three (3) conditions exist: (i) A/E is in default of any of its obligations under this Contract, and fails to commence to correct, and continuously and diligently proceed to cure, such default within seventy-two (72) hours after receiving TFC's written notice of such default; (ii) A/E seeks payment for Services that were not performed under and in accordance with this Contract, in which case the amount of such payment may be withheld without notice; or (iii) A/E has failed to make promptly when due any payment to any A/E Personnel or other third party used by A/E to perform this Contract, and for which TFC has paid A/E, in which case payment equal to such amount may be withheld without notice. TFC's right to withhold payment hereunder is in addition to any and all legal and/or equitable remedies available to TFC under the law.

4.10. Final Payment. Prior to final payment to A/E, A/E shall furnish evidence satisfactory to TFC that there are no claims, obligations or liens outstanding in connection with its Services. Acceptance of final payment shall constitute a waiver of all claims by A/E for compensation for its Services.

4.11. Claims, Obligations, and Liens. Should there be any claim, obligation or lien asserted before or after final payment is made that arises from A/E's Services, A/E shall reimburse TFC for any costs and expenses, including attorneys' fees, costs and expenses, incurred by TFC in satisfying, discharging or defending against any such claim, obligation or lien, including any action brought or judgment recovered, provided TFC is making payments or has made payments to A/E in accordance with the terms of this Agreement.

4.12. Damages and Failure to Perform. Should A/E or its consultants cause damage to the Projects, or fail to perform or otherwise be in default under the terms of this Agreement, TFC shall

have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect TFC from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

V. ACKNOWLEDGEMENT, COVENANTS, AND AGREEMENTS.

5.1. Acknowledgement, Covenants, and Agreements of TFC. TFC acknowledges, covenants, and agrees, as follows.

5.1.1. TFC Deliverables to A/E. TFC shall provide A/E a copy of, or reasonable access to any documents in the possession of TFC related to the Site, including the Project Analysis, or the equivalent thereof. Provided, however, A/E shall not be entitled to rely on the accuracy or completeness of any such documents.

5.1.2. TFC Obligations to A/E. TFC shall:

5.1.2.1. assist A/E in obtaining such access to the Sites as is reasonably necessary to enable A/E to provide the Professional Services;

5.1.2.2. designate the TFC Project Manager(s); and

5.1.2.3. provide intermediate reviews of the Work Product of A/E as necessary to allow A/E to proceed with delivery of the Professional Services in a timely manner.

5.1.2.4. Notwithstanding any provision in this Agreement to the contrary, TFC shall not be responsible for the adequacy of any planning, performance or design criteria for the Projects. TFC shall be entitled to rely upon A/E to determine the adequacy, accuracy and completeness of all Services rendered for the Project, including the adequacy of any planning, performance or design criteria related to the Services. A/E shall also be responsible for determining the adequacy, accuracy and completeness of any information furnished to A/E by or on behalf of TFC and used by A/E in rendering its Services.

5.2. Acknowledgements, Covenants, and Agreements of A/E. A/E acknowledges, covenants, and agrees as follows.

5.2.1. Timely Delivery of Conforming Services. A/E will, subject to Force Majeure events, as defined in Section 11.12 below, timely provide the Professional Services in conformity with, and as specified in, this Agreement, the UGC, the Supplementary General Conditions, any Special Conditions, and in the Construction Documents.

5.2.2. Modifications. Modifications to any Deliverables which are made necessary by the errors and/or omissions of A/E or any A/E Personnel, or any additional costs or damage to the Projects arising therefrom, shall be resolved and covered to TFC's satisfaction by A/E at its

sole cost and expense.

5.2.3. Limitation of Authority. A/E agrees that the TFC Project Manager(s) shall not have any express or implied authority to vary or otherwise amend the terms and conditions of this Agreement in any way, or waive strict compliance with the terms and conditions of this Agreement, except as to the deadlines set out in the Professional Services Schedule, "Exhibit H." Any deviation from a deadline must be Approved by the TFC Project Manager(s) in writing issued prior to the expiration of any such deadline.

5.2.4. A/E Safety. (a) A/E and all A/E Personnel conducting work or Services for TFC shall abide by all OSHA rules and regulations provided by the Department of Labor, OSHA, Code of Federal Regulations, Chapter 29. Employees of A/E and Subcontractors shall be trained in accordance with Chapter 29, Occupational Safety and Health Regulations.

5.2.4.1. TFC, in its sole discretion, may at any time order in writing a temporary stand-down of A/E's performance of the Services ("Safety Stand-Down Order") as a result of any one or more Safety Incidents, whereupon A/E shall immediately direct all A/E Personnel to stop all Services while A/E conducts a comprehensive review of A/E's safety management plan and any Site conditions affecting safety at any Project Site, for the purpose of (i) identifying any safety hazards and unsafe working conditions; (ii) conducting safety training of A/E Personnel involved in performance of the Services who were or may have been exposed to harm in connection with such Safety Incident(s); and (iii) taking any corrective action that A/E determines to be necessary and appropriate to fulfill its obligations in accordance with this Agreement. Upon receipt of TFC's Safety Stand-Down Order, A/E shall not resume performance of the Services until it has issued to TFC a written report, which shall be due within forty-eight (48) hours of the receipt of TFC's Safety Stand-Down Order, detailing the course of action that A/E has taken, or plans to take, to resolve the Safety Incident(s) described therein, and to prevent the recurrence thereof. After reviewing such course of action with TFC, A/E shall, in the exercise of A/E's reasonable judgment, propose the date by which A/E will complete all corrective action. Services shall resume only upon TFC's delivery of further written notice to A/E withdrawing TFC's Safety Stand-Down Order, which notice of withdrawal shall not be issued until TFC is reasonably satisfied that A/E has sufficiently implemented all appropriate corrective action as necessary to enable A/E to safely resume Services, fulfill its contractual obligations set forth in this Agreement, and thereby avoid recurrence of the Safety Incident(s). A/E shall not be entitled to an adjustment of A/E's Compensation, or the Professional Services Schedule, as the result of TFC's issuance of a Safety Stand-Down Order. If A/E fails to implement the corrective action in the manner proposed by A/E and determined by TFC to be reasonably acceptable, such failure shall be deemed a material breach of this Agreement and TFC may, without further notice, terminate this Agreement for cause. In responding to any Safety Stand-Down Order, A/E's evaluation of the need for, and its plan of, corrective action shall be undertaken as an independent contractor, pursuant to Section 11.4, and nothing herein shall be construed or interpreted to mean that TFC has assumed or agreed to assume any duty of care to A/E Personnel, or to provide guidance or instruction as to A/E's means and methods for managing safety as required by this

Agreement. Any action taken by TFC hereunder to enforce TFC's rights to require A/E to fulfill its safety obligations under this Agreement shall be deemed to be undertaken solely for the purpose of fulfilling TFC's contractual expectation of results in terms of delivery of the Project without causing injury or harm to persons or property.

5.2.5. Cooperation. All project managers, employees, and associated Subcontractors of A/E shall cooperate with and assist each other and all other contractors and design professionals retained by TFC.

5.2.6. Cooperation by A/E.

5.2.6.1. A/E agrees to conduct all of its services under this Agreement by and through appropriate communications with the TFC Project Manager(s). No work, installation or other services shall be undertaken by A/E except with the prior written authorization of the TFC Project Manager(s).

5.2.6.2. A/E understands and agrees that work, installation or any other service performed without the prior written authorization of the TFC Project Manager(s) is work outside the scope of this Agreement and shall be performed exclusively at A/E's risk.

5.2.6.3. A/E agrees to employ competent personnel meeting the requirements set forth herein, who shall be satisfactory to TFC. Personnel assigned to perform Services may not be reassigned without the prior written approval by the TFC Project Manager(s). TFC may request that A/E replace unsatisfactory personnel, which request shall not be unreasonably denied.

5.2.6.4. A/E agrees to cooperate and coordinate its work and Services with that of other members of the Project Team. Upon discovery of an apparent conflict in the sequencing of work or Services with another service provider, A/E shall report the concern to the TFC Project Manager(s).

5.2.6.5. A/E shall bear all costs associated with the replacement of any of its Key Personnel identified in List of A/E's Key Personnel, "Exhibit D."

5.2.7. 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 the Agreement; and (ii) all persons (including subcontractors) assigned by A/E to perform work or Services pursuant to the 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 A/E, and A/E's Subcontractors, as proof that this provision is being followed. If this certification is falsely made, the 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 sub-contractors) shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

5.2.8. Identification of Project Manager and All Subcontractors. A/E Project Manager identified in the initial List of A/E's Key Personnel, "Exhibit D," will supervise the efforts of A/E to timely provide TFC with the Services.

5.2.8.1. A/E Project Manager must be committed to the Project on a full-time basis. TFC reserves the right to Approve the appointment of A/E Project Manager and to demand that A/E Project Manager, and any of A/E's employees or Subcontractors, 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 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 Laws and Regulations; (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.

5.2.8.2. A/E Project Manager and Subcontractors identified in the List shall not be removed or replaced by A/E, nor shall any other Subcontractors be engaged by A/E, unless prior written consent is obtained from TFC, which consent shall not be unreasonably withheld, conditioned, or delayed.

5.2.9. 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 Texas Government Code, Chapter 2155 (West 2016).

5.2.10. 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 the Deliverables or Professional Services.

5.2.11. No Guaranty. A/E does not control or guarantee the performance of any service provider not under the supervision or control of A/E, provided however, A/E shall promptly notify TFC of any observation of a service provider's failure to perform their duties and responsibilities in accordance with the Construction Documents, the Work Progress Schedule, and applicable Laws and Regulations, and shall recommend to TFC candidate measure(s) to correct such failures.

5.2.12. 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 Texas Government Code, Section 403.055 (West 2013 & Supp. 2015).

5.2.13. General and Criminal Background Check.

5.2.13.1. A/E represents and warrants that neither A/E nor any of A/E's employees, have 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 in writing as to the facts and circumstances surrounding the conviction(s).

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

5.2.14. Equal Opportunity. A/E shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, disability, political affiliation, or religious belief. 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, age, national origin, 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 Subcontracts pertaining to the Professional Services.

5.2.15. No Advertising. 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.

5.2.16. No Warranties by TFC. A/E acknowledges that any and all tests, maps, reports, and drawings and any other documentation (hereinafter referred to collectively as "Reports") in the possession of TFC that reflect or depict any Site boundaries, recorded easements, topography, utility locations, and other Site conditions and/or restrictions which may impact A/E's prosecution of the Services or work were prepared solely for the benefit of TFC, 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.

5.2.17. No Outsourcing. All Services under this Agreement shall be performed in the

principal offices of A/E and A/E Personnel. If A/E's offices or the offices of any A/E Personnel 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.

VI. WARRANTIES AND REPRESENTATIONS BY A/E.

6.1. Warranties and Representations by A/E. A/E hereby makes the following warranties, representations and certifications, all of which are true, accurate and complete at the time of the Effective Date and throughout the term of the Agreement, and which shall be true, accurate and complete with respect to each Deliverable. All representations and warranties discussed below shall survive the expiration or termination of this Agreement.

6.1.1. Compliance with All Laws. A/E 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 to provide the goods or services required by this Agreement. 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 Subcontractors during performance of this Agreement. As part of its delivery of the Professional Services, A/E shall make itself familiar with and at all times shall observe and comply with all Laws and Regulations of all Governmental Authorities that in any manner affect performance under this Agreement.

6.1.2. Immigration Reform; Compliance with Laws and Regulations. The Immigration Reform and Control Act of 1986 and 1990 requires 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 and subcontractors 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 Subcontractor, to perform any Professional Services on behalf of or for the benefit of the State, without first confirming said employee's authorization to lawfully work in the United States.

6.1.2.1. A/E warrants 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 Subcontractor ineligible to legally work in the United States.

6.1.2.2. A/E further acknowledges, agrees, and warrants that A/E: (i) has complied, and shall at all times during the term of the 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 the Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement ("DHS–ICE"), 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 the Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the 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.

6.1.2.3. A/E warrants and represents that all Services shall be performed in compliance with all Laws and Regulations, including any laws and regulations dealing with employer-employee relations, including, as amended, the "Fair Labor Standards Act" of 1938, the "Walsh-Healy Act," and "Nondiscrimination in Employment," Executive Order No. 11246 of September 24, 1964. All codes, laws and regulations required to be incorporated in a contract of this character are hereby incorporated herein by reference, including but not limited to all applicable requirements of the Texas Department of Licensing and Regulation. Compliance with the above shall include the adoption of all programs, making of all certifications and filing of all reports as required thereby. All terms required by any of the foregoing are hereby incorporated herein by reference. A/E shall execute and deliver to TFC such documents as may be required to effect or evidence compliance.

6.1.2.4. A/E further warrants and represents that in carrying out its duties and responsibilities under this Agreement, it will neither undertake nor cause, nor permit to be undertaken, any activity which either: (i) is illegal under any Laws and Regulations, decrees, or rules, in effect in the United States, or (ii) would have the effect of causing TFC to be in violation of any laws, decrees, rules, or regulations in effect in the United States. A/E shall protect and indemnify TFC and TFC's officers and agents against any claim or liability arising from or based on any violation of the same.

6.1.2.5. A/E acknowledges, agrees, and warrants that all Subcontractors permitted by it to perform Professional Services will be required to agree to these same terms as a condition to being awarded any Subcontract for such work.

6.1.3. Proficiency in Systems. A/E is proficient in the use of CAD systems, BIM systems, and the EPMCS utilized by TFC.

6.1.4. Standard of Care. A/E shall, in the performance of the Services, comply with the standard of care described herein. Notwithstanding anything to the contrary contained in this Agreement, Owner and A/E agree and acknowledge that Owner has entered into this Agreement in reliance on A/E's special and unique abilities to perform its obligations hereunder. A/E accepts that, by this Agreement, a relationship of trust and confidence is hereby established between it and Owner. A/E understands the complexity involved in this type of construction and the necessity of coordination of the performance of its Services with the Project Team. In addition to the foregoing, and in addition to the rights and remedies otherwise existing under this Agreement, at law or in equity, A/E will perform, or cause to be performed, all Services expeditiously, and in no event later than is required to conform, as applicable, to the Professional Services Schedule, and shall do so with that degree of professional skill and care practiced by similar firms, using similar collaborative project planning methods, and having industry leading knowledge and skill engaged in providing similar services for major construction projects of comparable value in the United States under the same or similar circumstances. A/E will furnish efficient business and contract administration and perform the Services in such manner as to provide Owner the best value. It is the intention of the parties that A/E shall, at all times, act in Owner's best interests with respect to the performance of the Services and the management of all aspects of the Project. A/E shall, at all times, exercise exclusive direction and control, and shall be responsible for proper supervision of all its A/E Personnel, Subcontractors, and subconsultants while present on the Worksite and otherwise. The standard of care required hereunder shall not, however, be deemed to alter or expand A/E's common law duty to Owner with respect to liability for, or the duty to indemnify, defend or hold Owner harmless under Article XI with respect to claims or liability for bodily injury or property damage, for which the standard of care hereunder shall be deemed and construed to be no greater than that imposed upon A/E by common law. Also, the standard of care required hereunder shall not be deemed to alter or expand A/E's status as an independent contractor.

6.1.4.1. Pursuant to Texas Local Government Code Section 271.904(d), A/E hereby represents and warrants:

6.1.4.1.1. that it shall perform the Services with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license;

6.1.4.1.2. that it shall perform the Services as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect; and

6.1.4.1.3. that each of the employees and agents assigned to perform A/E's obligations under this Agreement shall have the skill and training to perform the Services in accordance with the foregoing Standard of Care, and that all Deliverables shall be produced in a professional and workmanlike manner.

6.1.5. Warranty of Deliverables. All Deliverables shall be: (i) completed and delivered in a timely manner and in a manner consistent with standards in the applicable trade, profession, or industry; (ii) conform to or exceed the specifications set forth in this Agreement; and (iii) be fit for ordinary use, of good quality, and with no material defects; and (iv) comply with all applicable Laws and Regulations. A/E has carefully reviewed the Professional Services Schedule, "Exhibit H," and, based upon the professional judgment of its experienced and qualified architectural and engineering professionals, A/E represents and warrants that it is able to complete the Services within the time provided in Professional Services Schedule, in conformity with TFC's requirements.

6.1.6. Familiarity with Sites. A/E represents that it: (i) has thoroughly reviewed all documentation provided by TFC or otherwise available to A/E for the Projects and the Sites; (ii) has visited the Sites for the Projects; and (iii) has thoroughly familiarized itself with the local conditions under which the Services are to be performed. A/E has considered all of the foregoing in agreeing to be bound to perform the Services for the fixed fee established in Section 4.1.1 of this Agreement.

6.1.7. No Material Change in Qualifications or Responses to Request for Qualifications. A/E represents that all information contained in A/E's responses to TFC's Request for Qualifications, RFQ No. 303-8-01663 Addendum No. 2 dated July 2, 2018, including but not limited to A/E's statements and representations as to its history, experience, capabilities, litigation disclosure, financial information, and other qualifications are accurate and complete, and no material change in circumstances has occurred that would cause A/E's responses to be untrue or materially different than what was originally stated.

6.1.8. Financial Ability and Insurance. A/E represents that it is financially solvent and possesses or is able to engage sufficient working capital to complete the Services as required by this Agreement. A/E's insurance policies are and will be maintained in the form required under TFC's Requirements of Insurance (Article X).

6.1.9. General and Professional Licensing. A/E represents that A/E, including A/E Personnel, and its employees and representatives hold in its and their names all licenses required to render the Services, and they are duly qualified, licensed, registered and authorized as required by Laws and Regulations to perform the Services required hereunder.

6.1.10. Execution of Contract Duly Authorized. A/E represents that A/E's execution and adoption of this Contract has been duly authorized, approved and/or ratified, and A/E has confirmed the authority of the person executing this Contract on behalf of A/E to bind A/E to this Contract.

6.1.11. Royalties and Licenses to Use Intellectual Property. A/E represents that it will pay all royalties and license fees due in connection with the Services. A/E warrants that neither the Services nor use of A/E's Work Product will infringe any patent or other proprietary

right. Should A/E, in consultation with TFC, determine that A/E's proprietary information, data or systems will be used on the Projects, TFC agrees to enter into a licensing agreement as necessary to enable TFC to utilize A/E's proprietary information, data or system, in connection with the Projects, which license agreement shall be non-exclusive, perpetual, and not require further expenditure by TFC or its representatives for such purposes.

6.1.12. Warranty of Services. A/E represents the Services rendered hereunder shall be performed in accordance with A/E's Standard of Care, all Laws and Regulations, and the requirements of this Contract. A/E shall re-perform any Services or Additional Services in accordance with this Contract as required to correct any error, omission, defect or deficiency arising within a period of two (2) years following the completion of all Services required under this Contract to the extent any such error, omission, defect or deficiency arises as a result of A/E's failure to perform the Services or Additional Services hereunder in accordance with A/E's Standard of Care.

6.1.13. Additional Warranties. In performing its Professional Services for the Projects, A/E shall be bound by, and comply with, any warranties, representations, and/or promises of additional services included in A/E's response to the Request for Qualifications, dated July 31, 2018, incorporated herein for all purposes as "Exhibit M," but only to the extent any such warranties, representations, and/or promises of additional services are made therein.

6.1.14. Eligibility. A/E certifies that the individual or business entity named in 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 pursuant to Texas Government Code, Section 2155.004(b) (West 2016).

6.1.15. Family Code Disclosure of Ownership. Pursuant to the requirements of the Texas Family Code, Section 231.006 (West 2014 & Supp. 2015), 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.

6.1.16. Deceptive Trade Practices Act; Unfair Business Practices Disclosures. A/E has not been found liable of Deceptive Trade Practices Act violations under Chapter 17 of the Texas Business and Commerce Code 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 Chapter 17 of the Texas Business and Commerce Code 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.

6.1.17. Disclosure of Former State Executives. Pursuant to Texas Government Code, Section 669.003 (West 2012 & Supp. 2015) 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.

6.1.18. Financial Interest/Gifts. (i) Pursuant to Texas Government Code Sections 572.051 (West 2012 & Supp. 2015) and 2255.001 (West 2016) and Texas Penal Code Section 36.09 (West 2011 & Supp. 2015), 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 Contract. (ii) Pursuant to Texas Government Code Chapter 573 (West 2012 & Supp. 2015) and Section 2254.032 (West 2016), 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.

6.1.19. 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 Texas Government Code, Chapter 573 (West 2012 & Supp. 2015) and Section 2254.032 (West 2016). 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 Contract during the twelve (12) month period immediately following the employee's last date of employment at TFC.

6.1.20. Affirmation as to Submittals. Upon submittal to TFC of any 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.

6.1.21. Prohibition Against Boycotting Israel. In accordance with Section 2270.002 of the Texas Government Code, by signature hereon, A/ E certifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

6.1.22. Prohibition Against Contracting with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations. In accordance with Section 2251.152 of the Texas Government Code, TFC is prohibited from entering into a governmental contract (as defined in Texas Government Code Section 2252.151(3)) with a company that is identified on a list prepared and maintained under Texas Government Code Section 806.051, 807.051, or 2252.153. If contractor is on the above-referenced list the Contract will be considered void or voidable and TFC will not be responsible to pay Contractor for any work performed.

VII. STATE FUNDING.

7.1. 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 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. Furthermore, 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.

VIII. COPYRIGHTS AND TRADEMARKS.

8.1. 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 Texas Government Code, Chapter 552 (West 2012 & Supp. 2015). 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.

8.1.1. 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.

8.1.2. Delivery to TFC. A/E shall promptly provide copies of the Deliverables to TFC upon completion, 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.

8.1.3. 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.

8.2. No Use of Name or Trademark. A/E agrees not to make any written use of or reference to TFC's name or registered or unregistered trademarks 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 discretion.

IX. RECORDS, AUDIT, PROPRIETARY INFORMATION, AND PUBLIC DISCLOSURE.

9.1. 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 state and federal regulations and statutes.

9.2. 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 Subcontractors, 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 Texas Attorney General, 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 Subcontracts shall reflect the requirements of this section. In addition, pursuant to Texas Government Code, Section 2262.154 (West 2016), 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 Subcontract to this 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.

9.3. Records Retention. All records relevant to this Contract shall be retained for a minimum

of seven (7) years. This retention period runs from the date of payment for the relevant goods or services by TFC, or from the date of termination of the Contract, 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.

9.4. Confidentiality Provisions Applicable to A/E.

9.4.1. 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 Professional 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.

9.4.2. 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. 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).

9.4.2.1. Work Product resulting from, or related to, work, projects, or services performed or to be performed by A/E for TFC 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.

9.4.2.2. 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.

9.4.2.3. 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).

9.4.2.4. 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.

9.4.2.5. 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.

9.4.2.6. 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 Texas Government Code, Section 2267.001 (West 2016), as the same may be amended from time to time, including, but not necessarily limited to, the names of the Contracting Person, including their representatives, (collectively, "Business Customers"); the parties to and substance of any agreements between TFC and said Business Customers; services and data provided, or to be provided, by or to said Business Customers; and 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.

9.4.2.7. "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.

9.4.3. 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.

9.4.3.1. 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.

9.4.3.2. 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.

9.4.3.3. 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.

9.4.3.4. 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.

9.4.4. 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.

9.5. Confidentiality Provisions Applicable to TFC. Subject to the provisions of Section 9.6 below, TFC shall keep confidential all information, in whatever form, produced, prepared, or observed by A/E to the extent that such information is: (i) confidential by law; (ii) marked or designated "confidential," or words to that effect, in a font size no smaller than 14 point, by A/E; or (iii) information that TFC is otherwise required to keep confidential by this Agreement.

9.6. Public Records. Notwithstanding any provisions of this Agreement to the contrary, A/E understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 (West 2012 & Supp. 2015). 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 Texas Attorney General. However, the final decision whether to seek a ruling from the Office of the Texas Attorney General 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.

X. INSURANCE.

10.1. Insurance Requirements. All persons who enter into an agreement to provide professional services (hereinafter referred to as "Agreement"), including, but not limited to, professional engineering services and/or professional architectural services, as defined in Texas Government Code, Chapter 2254, Subchapter A (West 2016) with the State of Texas, by and through TFC, must comply with the insurance requirements established hereunder before A/E is authorized to commence providing such professional services.

10.2. Required Insurance Coverages. The required insurance coverages for this Agreement are as set forth in this Article X.

10.3. TFC a Third-Party Beneficiary. No provision of this Agreement shall confer or be construed to create any right or benefit in any third party, including any A/E Personnel or any other entity which has assumed any of A/E's obligations hereunder, or in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third-party beneficiary of the Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto. A/E shall be solely responsible for all contractual obligations to A/E Personnel, and shall pay for the Services and Work of its A/E Personnel in accordance with Laws and Regulations. A/E shall provide that Owner, TFC, may, at its election, assume the status of a third party beneficiary to any contracts, subcontracts, consulting agreements, purchase orders and other agreements executed by A/E in connection with this Agreement and/or the Projects, which election may be exercised as to any such agreement by TFC's issuance of written notice of such election to the other party or parties to such agreement.

10.4. Required Insurance Coverages No Effect On Indemnifications. 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.

10.5. 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.

10.6. Duty to Purchase Lines of Insurance; A/E's Expense. Commencing on the Effective Date, the Architect/Engineer ("A/E") shall, at its own expense, purchase, maintain and keep in full force and effect such lines of insurance coverage as will protect A/E from claims and to protect Owner and the Owner Group from claims (other than claims asserting professional liability of the Owner and Owner Group or workers' compensation claims of their employees), which may arise out of or result from A/E's Services or Work, regardless of whether the Services or Work are performed by A/E, A/E Personnel, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable (including at a minimum the following minimum insurance coverages and limits; provided, however, if other Contract Documents require insurance coverage or minimum limits that are greater than those listed below, the minimum limits in the other Contract Documents shall control and shall be provided by A/E). For purposes of this provision, the term "Owner Group" means the Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711, its officials, directors, employees, representatives, and volunteers.

10.7. A/E's Duty to Review Its Insurance. A/E represents and warrants it has carefully reviewed its insurance program with its legal and risk advisors and has determined 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. A/E shall submit true and complete Certificates of Insurance complying with this Article X in electronic form by emailing true and complete copies of such certificates of insurance to the TFC Insurance Specialist, Heidi Gonzales at Heidi.Gonzales@tfc.state.tx.us. Such true and complete copies of all applicable Certificates of Insurance complying with this Article X shall be submitted within five (5) business days of TFC's request to submit them, and no contract will be executed without the receipt, review, negotiation, and TFC acceptance of the submitted policies. Owner's review of A/E's Certificates of Insurance shall in no way excuse A/E from any of the requirements set forth herein. In the event Owner enters into contract with A/E before any such deficiencies are resolved,. Owner does not waive, but explicitly reserves, the right to bring, after (i) the occurrence of any loss or damage for which insurance is required hereunder, or (ii) after the denial of a claim for coverage for such loss or damage, an action or Claim against A/E to recover directly from A/E any damages, including attorney's fees and other costs, Owner incurs as a result of A/E's failure to secure and maintain the insurance required hereunder. A/E acknowledges and agrees that any period of limitations shall not begin to run or, alternatively, shall be tolled until the time of the later of such occurrence or denial.

10.8. Statutory Worker's Compensation and Employer's Liability Insurance. Statutory Worker's Compensation and Employer's Liability Insurance with minimum limits of not less than indicated below. A/E shall require Subcontractors to provide Workmen's Compensation and Employer's Liability Insurance with the same minimum limits. The policy must be in the name of A/E and contain an endorsement naming Owner as the Alternate Employer.

10.8.1. AE's Certification. By execution of the Agreement, A/E thereby certifies, pursuant to Texas Labor Code, Section 406.096(a), that A/E provides workers' compensation and employers' liability insurance for all employees employed on this public project with limits of not less than those required below.

10.8.2. Subcontractor's Certification. As per Texas Labor Code, Section 406.096(b), A/E shall require each Subcontractor to certify in writing to A/E that said Subcontractor provides workers' compensation and employers' liability insurance for all of Subcontractor's employees employed on this public project. A/E shall forward said certifications to Owner within ten (10) days of the Effective Date of the Agreement.

10.8.3. Other States Endorsement. The policy must include an Other States Endorsement to include the State of Texas if A/E's business is domiciled outside the State of Texas. Required Limits of Coverage – Statutory limits, with Employer's Liability Coverage as follows:

Bodily Injury by Accident	$1,000,000.00
Bodily Injury by Disease Each Employee	$1,000,000.00
Bodily Injury by Disease Policy Limit	$1,000,000.00

10.9. Commercial General Liability ("CGL") Insurance. CGL Insurance with minimum limits of coverage not less than those indicated below, written on the most current commercially available edition of the ISO CG 00 01 coverage form, and shall include Owner Group as additional insureds on its CGL and Excess Liability policies on a combination of unmodified ISO endorsements CG 20 10 10 01 and CG 20 37 10 01, or manuscripted endorsements identical thereto. Such policy shall contain no exclusions, limitations, endorsements or policy forms unacceptable to Owner, including but not limited to the following coverage exclusions and limitations:

10.9.1. Liability. Liability assumed by A/E 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;

10.9.2. Hazard Endorsement. 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;

10.9.3. Cross-Liability. Cross-liability on claims between any insureds, other than claims between named insureds;

10.9.4. Independent Contractors. Injury to independent contractors and employees of independent contractors;

10.9.5. Damage by Subcontractors. Any exclusion relating to damage to work performed by Subcontractors on behalf of A/E such as the ISO CG 22 94 or ISO CG 22 95, or their equivalent;

10.9.6. Business Classification. Any type of classification or business description limitation endorsement;

10.9.7. Construction Defects. Any type of endorsement excluding coverage for construction defects in the completed operations phase;

10.9.8. Employer's Liability. Any type of endorsement modifying the employer's liability exclusion;

10.9.9. Habitation/Residence. Any type of habitational or residential exclusion;

10.9.10. Punitive Damages. Any type of punitive, exemplary or multiplied damages exclusion; or

10.9.11. Subsidence. Any type of subsidence exclusion if A/E is engaged in any type of earth movement work, including but not limited to soil compaction, fill, or installation of storm or sewer drains.

10.9.12. CGL Minimum Coverages. The CGL policy shall at a minimum include the following coverages:

10.9.12.1. Bodily injury and Property damage on an "Occurrence" basis;

10.9.12.2. Premises & Operations Liability;

10.9.12.3. Products/Completed Operations Liability (to be maintained for the later of ten years after Substantial Completion or until expiration of the statute of repose);

10.9.12.4. Personal and Advertising Injury Liability;

10.9.12.5. Electronic Data Liability coverage under an endorsement equal to ISO CG 04 37 with a minimum sublimit of liability equal to the minimum amount required hereunder for the CGL policy; and

10.9.12.6. The policy shall include ISO endorsement CG 2503, Designated Construction Projects General Aggregate Limit, or its equivalent. Minimum CGL limits of coverage required:

Each Occurrence	$2,000,000.00
General Aggregate	$4,000,000.00
Products & Completed Operations Aggregate	$4,000,000.00
Personal and Advertising Injury	$2,000,000.00

If the limits of coverage required above are below the actual limits of coverage in A/E's primary commercial liability insurance policy, the above required limits of coverage shall be deemed to be automatically increased to the amount of such higher actual limits to avoid a gap in coverage that would preclude coverage under the excess/umbrella policy for failure of the underlying policy to exhaust its policy limits.

10.10. Business Automobile Insurance. Business Automobile Insurance with the limits of coverage shown below to cover damages because of bodily injury or property damages caused by an accident and resulting from the ownership, maintenance or use of: (i) any auto, including owned, hired and non-owned autos; and (ii) any mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws.

Combined Single Limit Bodily Injury & Property Damage	$1,000,000.00

10.11. Excess liability Insurance. Excess Liability Insurance over Employers' Liability, CGL, Commercial Automobile Liability Policies, with the limits shown below and with coverage that is primary and non-contributory to any other insurance (primary, umbrella, contingent or excess) maintained by the Owner Group, following form over and affording coverage no less broad than the coverage in such underlying policies, including but not limited to: (i) additional insured status for the Owner Group; (ii) designated construction project(s) general aggregate limit; (iii) waiver of subrogation; and (iv) notice of cancellation.

Excess Liability Insurance (Per Occurrence)	$10,000,000.00
Excess Liability Insurance (General Aggregate)	$10,000,000.00

10.12. Professional Liability Insurance. Professional Liability Insurance shall be provided by A/E to cover the professional liability arising out of or in connection with any negligent act, error or omission of all A/E Personnel, including all design professionals and any non-professional A/E Personnel, and all members of any subconsultant firm or any joint venture or other firm of A/E acting for, in combination with, on behalf of, or under the direction or control of A/E in the

performance of any Services required under this Agreement, or arising from or in connection with the coordination, management or oversight of such A/E Personnel. This policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (i) bodily injury or property damage where coverage is provided on behalf of design professionals or subcontractors; (ii) habitational or residential operations; (iii) mold and/or microbial matter and/or fungus and/or biological substance; (iv) punitive, exemplary or multiplied damages; (v) contractual liability caused by, related to, or arising from a negligent act, error or omission of A/E Personnel (or any limitation or exclusion that restricts coverage to only liability that would exist in the absence of contract); or (vi) design/build services.

Professional Liability Insurance	$10,000,000.00 Per Claim/$10,000,000.00 Aggregate

10.13. Cyber/Privacy Liability Insurance Policy. Cyber/Privacy Liability Insurance Policy shall be provided by A/E to cover risk of loss to electronic data. The policy must include coverage for electronic vandalism to electronic data, including coverage for willful electronic alteration of data, introduction of viruses which impact electronic data, unauthorized use of electronic data, or denial of service to web site or email destinations.

$500,000 applicable to each location where original information (electronic data) is stored $100,000 away from premises

10.14. Endorsements. Each of A/E's liability insurance policies (excluding only A/E's workers' compensation/employers' liability and professional liability policies), shall be endorsed to provide that they are primary to and non-contributing with, any other insurance carried by, or for the benefit of the Owner Group under the ISO CG 20 01 04 13 coverage form. It is the specific intent of the parties to this Agreement that all such insurance policies shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess) maintained by Owner Group, with Owner Group's insurance being excess, secondary and noncontributing. Insurance may be provided under a single limit policy, or two or more policies with combined limits for the required amount of coverage. Within thirty (30) days following receipt of Owner's request, A/E shall furnish to Owner a letter issued by any insurer of A/E confirming the extent to which the insurer's coverage of the A/E is at risk of being, reduced, diminished or exhausted by claims thereon. If any insurance A/E furnishes shall be, or become at risk of being, reduced diminished or exhausted by claims thereon, A/E agrees to supplement, increase and/or replace such insurance with other insurance to ensure that A/E has available at all times the coverage required hereunder.

10.15. Subrogation. A/E's workers' compensation, employers' liability, commercial automobile liability, CGL, excess liability, and professional liability insurance policies shall be endorsed to waive all rights of subrogation in favor of the Owner Group. With respect to all such policies, A/E waives any and all rights of recovery or subrogation against the Owner Group.

10.16. Additional Insureds. The Owner Group shall be included as additional insureds without limitation on all policies required herein (except workers' compensation, employers' liability and professional liability policies), under the form of an additional insured endorsement providing the maximum protection to Owner allowed by applicable law, except as otherwise expressly stated herein. A/E represents and warrants that:

10.16.1. Maximum Extent Permitted. A/E's policies of liability insurance, including A/E's commercial general liability, commercial automobile liability, and excess liability insurance policies have been endorsed to cover the Owner Group as additional insureds to the maximum extent permitted by applicable law, or as otherwise set forth herein, with respect to liability arising out of Work performed by or for A/E, including ongoing and completed operations in connection with this Contract (and such coverage provides for the protection of each insured against claims of liability by another insured under a separation of insureds clause).

10.16.2. Third Parties. Such policies of insurance have also been endorsed to cover as an additional insured any third party to the extent required by the Contract Documents.

10.16.3. Indemnified Party. Such endorsements provide as to each additional insured, coverage to the limits of each such policy for at least each Claim that is no less broad than the obligations of A/E to indemnify, defend and hold harmless the additional insured as an Indemnified Party under the Contract.

10.16.4. Original Policies. Access to the originals of the certified copies of required insurance policies will be provided to Owner for review upon request.

10.16.5. Attachments. Attached hereto are true and correct copies of the following:

10.16.5.1. current certificates of insurance describing each of the policies of insurance required hereunder; and

10.16.5.2. all policy endorsements required hereunder.

10.17. Notification. All policies shall obligate the insurer to notify the Texas Facilities Commission (Attn: Legal Services Division), P.O. Box 13047, Austin, Texas 78711, of any: (i) non-renewal; (ii) cancellation; or (iii) material changes, in writing, at least 30 days prior to any such non-renewal, cancellation or change. All polices shall require at least ten (10) days' notice of cancellation to Owner in the event of non-payment of premiums by A/E.

10.17.1. "Material Change" means any of the following changes to the Policy during the term of the Policy:

10.17.1.1. a change in the policy period;

10.17.1.2. a material revision to, or removal of, a coverage section;

10.17.1.3. 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

10.17.1.4. an increase of the amount of any self-insured retention(s).

10.17.2. A/E shall not cause or permit its insurance to be canceled, reduced, restricted, limited, or invalidated.

10.18. Insurance Carriers. All A/E's insurance shall be issued by insurance carriers authorized to do business in Texas at the time the policy is issued (and at all times during the term of this Agreement) and rated by A.M. Best Company as A-VII or better, confirmed by one or more insurance certificates conforming to the following requirements:

10.18.1. Accord Form. Certificates of insurance shall be prepared on an Acord 25 (2010/05) form, or any later edition of this form.

10.18.2. Certificate Holder. Certificates shall designate Owner as certificate holder, together with Owner's mailing address.

10.18.3. Name of Insured. The named insured's name must match A/E's name as shown in this Agreement.

10.18.4. List of Insurance Companies. Certificates shall list each insurance company producing each form of coverage, together with the applicable policy number and policy date.

10.18.5. Contact Information of Issuing Producer. Certificates shall include the name, address, phone number, fax number and email address of the issuing producer, and the signature of the authorized representative of the producer.

10.18.6. Additional Insured Endorsements. Certificates for all applicable policies shall attach copies of all applicable additional insured endorsements.

10.18.7. Deductibles. All deductibles and self-insured retentions shall be disclosed on the certificate, and shall be paid by, assumed by, for the account of, and at A/E's sole risk without any right of reimbursement. No deductible or self-insured retention shall exceed $150,000.00 without prior written approval of Owner, except as otherwise specified herein. If A/E elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding $150,000.00, A/E shall be obligated to grant Owner all rights against A/E to the same extent as if A/E had maintained the insurance required hereunder with a commercial insurer, including but not limited to additional insured status, (as to liability policies other than Professional Liability Insurance and Workers' Compensation Insurance) primary and non-

contributory liability, waivers of rights of recovery, other insurance clauses, and any other extensions of coverage required herein. A/E shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the same extent all of the foregoing would have been covered had A/E maintained the insurance required hereunder with a commercial insurer.

10.18.8. General Aggregate Limit. Certificates of applicable policies shall disclose any designated construction project(s) general aggregate limit (Owner reserves the right to require notice of replenishment and placement of supplemental coverage if any aggregate limit is exhausted during the applicable policy period).

10.18.9. Primary and Non-Contributory Endorsements. Certificates shall attach all primary and non-contributory endorsements required herein.

10.18.10. Waivers of Subrogation. Certificates shall attach waivers of subrogation applicable to all coverages required herein.

10.18.11. Notice of Cancellation Terms. Certificates shall attach copies of all notice of cancellation terms from all policies required herein.

10.18.12. Project Names. Name(s) of the Project(s) as described in this Contract shall be listed in the certificate.

10.18.13. Project and Contract Number(s). Owner's Project/Contract number(s) along with its descriptor caption must be included in the Description of Operations section located in the bottom half of the certificate forms.

10.18.14. Certificate Holder. Owner Group shall be shown as the certificate holder in the certificate holder section located in the bottom half of the certificate form as follows:

Texas Facilities Commission
Attn: Legal Services Division
1711 San Jacinto Boulevard, Room 400
Austin, TX 78701

10.18.15. Distribution of Completed Certificates. Completed certificates shall be distributed by A/E and shall be provided to TFC upon execution of this Contract and upon each renewal, replenishment, or supplementation of the coverage, thereunder, and certificates, as follows:

10.18.15.1. original shall be sent:

By Mail to: Texas Facilities Commission

Attention: Insurance Analyst
P O BOX 13047
Austin, TX 78711-3047

By E-Mail to: Heidi.Gonzales@tfc.state.tx.us

10.19. "Claims-Made" Policy Forms. With respect to any coverage maintained on a "claims-made" policy form, A/E shall maintain such coverage for a minimum of ten (10) years after Substantial Completion of the Project or termination of the Agreement, whichever occurs later. Coverage under any such policy form shall include a retroactive date based on the effective date of contract for the first performance of professional services for the Project. A/E's purchase of an extended discovery period or an extended reporting period on a "claims-made" policy will not be sufficient to comply with A/E's obligations hereunder.

10.20. Insurance Required to Commence Services. A/E shall not commence Services under this Contract until A/E has obtained all required insurance and until such insurance has been accepted by Owner's Approval. Owner's approval of A/E's insurance shall not relieve or decrease the liability of A/E hereunder. Owner shall have no duty to pay or perform under this Agreement until all certificates of insurance and required insurance policies have been confirmed by Owner's advisors to comply with the requirements set forth herein. A/E's failure to fulfill these insurance requirements shall not be a basis for any adjustment to A/E's compensation or schedule. Owner reserves the right to terminate this Agreement for convenience without any expense or liability in the event A/E fails to secure all insurance required herein within ten (10) days of A/E's execution of the Agreement.

10.21. Failure to Obtain, Maintain, or Renew Insurance. If A/E fails to timely obtain, maintain or renew the insurance required herein and to provide Owner with acceptable evidence thereof, Owner shall have the right, but not the obligation, to, among all other available remedies at law and in equity: (1) procure such insurance and reduce the amount of this Contract (or any other agreement between Owner and A/E) by the cost thereof; and/or (2) deem as a material breach of this Contract A/E's failure to do so. Within five (5) calendar days of any cancellation or non-renewal of any required line of insurance coverage, A/E shall provide Owner a replacement certificate of insurance with all applicable endorsements included therewith. Owner shall have the right, in its sole discretion, to suspend A/E's performance or terminate this Contract should there be a lapse in coverage at any time during this Contract. In addition to any other remedies available to Owner, Owner shall have the right, upon A/E's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, to withhold any payment(s) which become due to A/E hereunder (or under any other agreement between Owner and A/E) until A/E demonstrates compliance with the insurance requirements of the Contract. At Owner's discretion, A/E may be disqualified from eligibility to participate in any other or future projects with Owner for failure to comply with the insurance requirements herein.

10.22. A/E's Obligations. Nothing herein shall reduce or alter any obligation of A/E to indemnify, defend or hold harmless the Indemnified Parties identified in the Contract. A/E's obligations for loss or damage arising out of A/E's Services and Work or operations are not limited to the types or amounts of insurance set forth herein. Losses not covered by the insurance required hereunder shall be paid by A/E.

10.23. No Attorney's Fees. To the extent Applicable Law allows recovery of attorney's fees in any action or proceeding commenced to enforce the rights of any member of Owner Group as an additional insured under this Contract, A/E agrees to pay Owner as the prevailing party in any such action, in addition to any other relief granted, the actual reasonable attorney fees Owner has paid or is obligated to pay, and all costs and expenses to enforce such rights, not merely recoverable costs. This provision is independent and severable from any other provision of this Contract and shall be enforceable as a separate agreement.

10.24. Compliance. Owner shall not be under any duty to advise A/E in the event that A/E's insurance is not in compliance with the Contract. A/E shall require all A/E Personnel to carry the types and limits of insurance coverage A/E determines to be necessary and appropriate to protect Owner and A/E from the risk of loss, taking into consideration the scope of services and work performed by each A/E Personnel. Excepting only Workers' Compensation and Professional Liability insurance policies, A/E shall cause all A/E Personnel to include Owner as an additional insured under each policy of insurance maintained by A/E Personnel. A/E will require evidence of this insurance and additional insured status to be provided by all A/E Personnel prior to their commencement of any work or services, or entering onto any Site in connection with the Project, and copies of this evidence shall be provided to Owner by A/E.

10.25. Deductibles. A/E is responsible for all deductibles and any self-insured retentions under all lines of insurance coverage required by this Agreement.

10.26. Policy Limits. The stated policy limits of each line of insurance coverage required herein are minimum only and it shall be A/E's responsibility to determine what policy limits in excess of such minimum limits are adequate, and the length of time each line of insurance coverage shall be maintained beyond any lengths of time set forth herein; insurance policy limits are not a limit of A/E's liability. The insurance requirements set out herein shall not be interpreted as any representation or warranty that the required insurance coverages and limits will necessarily be adequate to fully protect A/E. Unless otherwise set forth herein, A/E shall not cause or permit any required insurance to be cancelled or to lapse prior to the expiration of all common law, statutory and contractual warranty periods.

10.27. Erosion of Aggregate Limits. A/E shall provide Owner with thirty (30) days written notice of erosion of any aggregate limits below the minimum amounts required by the Agreement.

10.28. Review. Owner reserves the right to review the insurance requirements and to require deletion, revision, and/or modification of particular policy terms, conditions, limitations, or

exclusions (except where policy provisions are established by law or regulations that are binding upon Owner, A/E, or the underwriter) on any such policies when deemed necessary and prudent by Owner 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. Owner shall make an equitable adjustment to the Contract Sum for any additional cost resulting therefrom.

10.29. Covenants. A/E covenants and agrees that: (i) the failure of Owner to demand certificates of insurance, or proof of compliance with the insurance requirement herein, or failure of Owner to identify a deficiency in any policy required hereunder will not be construed as a waiver of A/E's obligation to maintain the insurance required under this Agreement; (ii) the insurance required under this Agreement does not represent that coverage and limits will necessarily be adequate to protect A/E, nor shall the limits of coverage stated herein be deemed a limitation of A/E's liability to Owner in this Agreement; (iii) and A/E may meet the required insurance coverages and limits with any combination of primary and umbrella/excess liability insurance.

10.30. Release and Waiver. A/E hereby waives all rights of recovery and releases, and shall cause its subconsultants and subcontractors to release, the Owner Group from any and all claims or causes of action whatsoever which A/E and/or its subconsultants or subcontractors 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 subconsultants or subcontractors pursuant to the Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING RELEASE AND WAIVER SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER GROUP.

XI. MISCELLANEOUS PROVISIONS.

11.1 INDEMNIFICATION.

11.1.1. **ACTS OR OMISSIONS. A/E SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS TFC AND THE STATE OF TEXAS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY AND DAMAGES ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF A/E OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE AGREEMENT. THESE REQUIREMENTS SHALL SURVIVE THE TERM OR TERMINATION OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND**

SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO TFC. THE DEFENSE SHALL BE COORDINATED BY A/E WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TFC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TFC OR ITS EMPLOYEES (TEX GOV'T CODE SECTION 2254.0031).

11.1.2. **INFRINGEMENTS.** **A/E SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH OR ARISING FROM ANY WORK PRODUCT, INCLUDING DRAWINGS, SPECIFICATIONS, DOCUMENTS AND ENGINEERING CRITERIA SUCH AS METHODS, PROCESSES, TECHNIQUES OR PROCEDURES, PROVIDED OR FURNISHED BY A/E TO TFC IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF A/E PURSUANT TO THIS AGREEMENT. A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. A/E SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY A/E WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. A/E SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (i) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED; (ii) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT A/E'S WRITTEN APPROVAL; (iii) ANY MODIFICATIONS MADE TO THE PRODUCT BY A/E PURSUANT TO TFC'S SPECIFIC INSTRUCTIONS; (iv) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TFC; OR (v) ANY USE OF THE PRODUCT OR SERVICE BY TFC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT. IF A/E BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES A/E WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, A/E MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT A/E'S SOLE OPTION AND EXPENSE: (i) PROCURE FOR TFC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION**

OF THE PRODUCT OR SERVICE; OR (ii) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TFC'S USE IS NON-INFRINGING. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TFC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TFC OR ITS EMPLOYEES (TEX. GOV'T CODE SECTION 2254.0031).

11.1.3. **TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY. A/E AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, A/E SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF A/E'S AND A/E'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. A/E AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE SHALL NOT BE LIABLE TO A/E, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. A/E AGREES TO INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS AGREEMENT. A/E SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY A/E WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

11.1.4. Notice to TFC. In the event A/E becomes aware of any claim that may be subject to the above-described indemnification, A/E shall notify TFC of such claim within five (5) business days of becoming aware.

11.1.5. Settlement Authority. No settlement of any such claim shall be made by A/E without TFC's prior written approval.

11.2. Historically Underutilized Businesses ("HUBs"). In accordance with state law, it is TFC's policy to assist HUBs, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling A/E's obligations with TFC. If A/E subcontracts with others for some or all of the services to be performed under this Agreement, A/E shall comply with all HUB requirements pursuant to Chapter 2161 of the Texas Government Code (West 2016). A digital copy of the Initial Approved HUB Subcontracting Plan ("HSP") is incorporated herein for all purposes in PDF on the Exhibits CD and named therein as "Exhibit N." When required, A/E shall submit an updated HSP. Upon TFC approval of HSP update(s), such update(s) shall become, without further notice or action, a part of the incorporated "Exhibit N." A digital copy of the HSP form is incorporated herein for all purposes in PDF on the Exhibits CD and named therein as "Exhibit N-1." 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 HSP Progress Assessment Reporting ("PAR") form, a digital copy of the form for which is incorporated herein by reference for all purposes in PDF on the Exhibits CD, and named therein as "Exhibit N-2."

11.3. 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. Subject only to the terms of this Agreement, A/E shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. A/E agrees that TFC shall be entitled to have confidence in and rely upon A/E to undertake the rendering of Services in accordance with this Contract for and on behalf of TFC, and at all times to act in TFC's best interests with respect to the performance of the Services required hereunder. 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: (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; or (vi) unemployment compensation coverage provided by the State.

11.4. No Assignment and Subcontracts. 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 engage Subcontractors to perform some or all of the Professional Services. In any Approved Subcontracts, A/E shall legally bind such Subcontractor to perform and make such Subcontractor subject to all the duties, requirements, and obligations of A/E specified herein. Nothing herein shall be construed to relieve A/E of the responsibility for ensuring that the goods delivered and/or the services rendered by A/E and/or any of its Subcontractors comply with all the terms and provisions of this Agreement.

A/E must provide written notification to TFC of any such Subcontractor performing work under this Agreement, including the name and taxpayer identification number of Subcontractor, the task(s) being performed, and the number of Subcontractor employees expected to work on the task.

11.5. Drug Free Work Place. A/E, A/E's employees and all Subcontractors 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 all Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

11.6. No Smoking. All facilities where work is to be performed are nonsmoking buildings. A/E's employees and Subcontractors are prohibited from smoking in all areas except in areas designated for smoking.

11.7. Notices. All notices, demands and requests required in this Agreement (hereinafter referred to as "Notices") must 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 Postal Service, certified mail, return receipt requested with adequate postage prepaid; or (ii) one (1) business day after deposit with Federal Express or other comparable overnight delivery system for overnight delivery with all costs prepaid. Electronic copies of all Notices shall also be sent via electronic mail to the e-mail address(es) listed below; provided, no notice shall be deemed effective notice if only delivered by electronic mail. All Notices hereunder shall be addressed as follows:

If to TFC: Texas Facilities Commission
Attention: Legal Services
1711 San Jacinto Boulevard, Suite 400
Austin, Texas 78701
Email: Naomi.Gonzalez@tfc.state.tx.us

If to A/E: Kirksey Architects, Inc., dba Kirksey
Attention: Benito Guerrier
6909 Portwest Drive
Houston, Texas 77024
Phone: 713-426-7407
E-Mail: benitog@kirksey.com

Either party hereto may change its address by giving the other party written notice thereof at least five (5) business days in advance of the effective date for such new address.

11.8. 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 or sale no later than ten (10) business days of such change. A/E, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract 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 about the change and its impact on the Contract and A/E shall supply the requested information within five (5) working days of receipt of the request. 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 Contract. TFC may terminate the Contract due to any change to A/E that materially alters A/E's ability to perform under the Contract.

11.9. 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 Title 1 of the Texas Administrative Code, Chapter 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 ("DIR") 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 Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (http://www.buyaccessible.gov). Vendors and service providers 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/.

11.10. 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.

11.11. Proper Authority. The parties hereto represent and warrant 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 only for the period of time specified in the Agreement.

11.12. Force Majeure. Any delays in or failure of performance by either party, except in respect of the obligation for 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 (hereinafter referred to as "Force Majeure") including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods, earthquakes, hurricanes, or any other natural disaster or governmental actions.

11.12.1. Notice. In any such event, the party claiming Force Majeure shall notify the other party of the Force Majeure event in writing within forty-eight (48) hours of the commencement of the Force Majeure event, and within forty-eight (48) hours of the termination of the Force Majeure event. In the event said party fails to timely provide either of the above-described notices, such failure shall constitute, without further notice or action, a waiver of the right to claim Force Majeure for such event.

11.12.2. Extent and Duration. If possible, the notice shall set forth the extent and duration thereof.

11.12.3. Due Diligence. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. If however, despite the exercise of due diligence, a party impacted by a Force Majeure event is unable to resume performance for more than thirty (30) consecutive days, TFC may terminate this Agreement immediately for convenience pursuant to Section 3.2.2. Changes in the schedule or in the design or scope of the Project as a result of any Force Majeure which affect the cost of A/E's services under this Agreement require a written amendment to this Agreement.

11.13. Dispute Resolution. Claims, disputes, and other matters in question arising out of or relating to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institutions of legal or equitable proceedings by either party. Failure to follow the dispute resolution process below shall result in any claim filed by A/E in a court of law having jurisdiction over the claim to be summarily dismissed. Subject to Texas Government Code, Section 2260.002 (West 2016), the dispute resolution process provided for in Chapter 2260 of the Texas Government Code (West 2016) shall be used by the parties to attempt to resolve all disputes arising under this Agreement. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005 (West 2011 & Supp. 2015), the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) (West 2016) and Texas Civil Practice and Remedies Code, Section 114.002 (West 2011 & Supp. 2015) shall be governed by the following dispute resolution process:

11.13.1. Claims for Breach of Contract and Counterclaims.

11.13.1.1. A/E may make a claim against TFC for breach of a contract between TFC and SSE. TFC may assert a counterclaim against A/E.

11.13.1.2. 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.

11.13.1.3. 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.

11.13.1.4. 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 11.13.1.2 above.

11.13.2. Damages.

11.13.2.1. The total amount of money recoverable on a claim for breach of contract under this Section may not, after deducting the amount specified in Section 11.13.2.2 below, exceed an amount equal to the sum of:

11.13.2.1.1. the balance due and owing on the contract price;

11.13.2.1.2. the amount or fair market value of orders or requests for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed; and

11.13.2.1.3. any delay or labor-related expense incurred by A/E as a result of an action of or a failure to act by the unit of state government or a party acting under the supervision or control of the unit of state government.

11.13.2.2. Any amount owed the unit of state government for work not performed under a contract or in substantial compliance with its terms shall be deducted from the amount in Section 11.13.2.1 above.

11.13.2.3. Any award of damages under this Agreement may not include:

11.13.2.3.1. consequential or similar damages, except delays or labor-related expenses described by Section 11.13.2.1.3 above;

11.13.2.3.2. exemplary damages;

11.13.2.3.3. any damages based on an unjust enrichment theory;

11.13.2.3.4. attorney's fees; or

11.13.2.3.5. home office overhead.

11.13.3. Negotiation.

11.13.3.1. 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.

11.13.3.2. TFC's administrative rules located at Title 1, Part 5, Section 111.31 of the Texas Administrative Code apply to this Agreement and govern the negotiation of any dispute arising from this Agreement.

11.13.3.3. 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.

11.13.4. Mediation.

11.13.4.1. 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 shall agree to mediate a claim made under this Agreement.

11.13.4.2. TFC's administrative rules located at Title 1, Part 5, Section 111.31 of the Texas Administrative Code apply to this Agreement and govern the mediation of any dispute arising from this Agreement.

11.13.5. 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 Texas Civil Practice and Remedies Code, Chapter 114 (West 2011 & Supp. 2015) or the Texas Government Code, Chapter 2260 (West 2016) only after both parties have completed mediation of the claim in question.

11.13.6. Payment of Claims.

11.13.6.1. In accordance with the Texas Civil Practice and Remedies Code, Section 114.011, TFC may pay a claim resolved under Section 11.13 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.

11.13.6.2. Chapter 304 of the Texas Finance Code applies to a judgment awarded to a claimant, except that the applicable rate of interest may not exceed the maximum rate allowed by applicable Laws and Regulations.

11.13.6.3. Consistent with the Texas Civil Practice and Remedies Code, Section 114.011 (West 2011 & Supp. 2015), 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.

11.13.7. Representation of TFC. The Office of the Texas Attorney General shall defend TFC in any proceeding or adjudication conducted in conjunction with a claim brought under this Section 11.13.

11.14. Legal Construction and Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision herein, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision there shall be substituted a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

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. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their representatives, successors and assigns.

11.17. 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.

11.18. Limitation on Adjudication Awards. A/E expressly agrees as follows:

11.18.1. Recovery Limitations. In the event A/E brings a civil suit against TFC and prosecutes it to final judgment pursuant to Chapter 114 of the Code, any recovery by A/E shall be specifically limited to the balance due and owed by TFC on the Agreement as it may have been amended, including any amounts owed by written change orders.

11.18.2. Interest. Pre-judgment and post-judgment interest shall be limited to the rate allowed by applicable Laws and Regulations.

11.18.3. A/E Waiver of Claim. A/E HEREBY WAIVES ALL CLAIMS FOR MONETARY DAMAGES FOR ANY AMOUNT THAT MAY BE CLAIMED: (i) FOR THE INCREASED COST TO PERFORM WORK AS A DIRECT RESULT OF OWNER-CAUSED DELAYS OR ACCELERATION; (ii) BASED UPON AN UNJUST ENRICHMENT THEORY; (iii) FOR CONSEQUENTIAL AND EXEMPLARY DAMAGES; and (iv) FOR DAMAGES FOR ANY UNABSORBED HOME OFFICE OVERHEAD.

11.19. No Waiver of Sovereign Immunity. Except as may be expressly and specifically provided otherwise by Chapter 114, Texas Civil Practice and Remedies Code, 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 the 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.

11.20. No Implied Waiver. 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.

11.21. 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.

11.22. 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.

11.23. No Presumptions for Ambiguities. Each party hereby agrees, represents and warrants that: (i) the initial draft of this Agreement and any exhibits, and any additions, revisions, and amendments hereto, are the result of the parties' joint negotiations; (ii) each party has experience in the evaluation and assumption of risks and liabilities of the nature provided for herein, and has been represented and advised by legal counsel; and (iii) even though one Party may have drafted one or more or the documents comprising this Agreement, each party has been given the opportunity to review this Agreement and all its related documents with counsel of such party's choice. Therefore, each party hereby agrees, represents and warrants that any ambiguity in this

Agreement or its related documents shall not, by virtue of the drafting thereof, be construed more strongly in favor of or against any one party over another party.

11.24. 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 federal legal holiday, such deadline shall automatically be extended to the next day which is not a Saturday, Sunday, or federal legal holiday.

11.25. Schedule of Exhibits. The following shall be the exhibits to this Agreement, which are contained on the Exhibits CD, and are hereby incorporated herein by reference:

11.25.1. Exhibit A. 2015 Uniform General Conditions.

11.25.2. Exhibit B. 2018 Supplementary General Conditions.

11.25.3. Exhibit C. A/E Guidelines.

11.25.4. Exhibit D. List of A/E's Key Personnel.

11.25.5. Exhibit E. A/E's Fee Schedule and Staffing Plan.

11.25.6. Exhibit F. Texas Capitol Complex Master Plan (Available at this link: https://www.tfc-ccp.org/).

11.25.7. Exhibit G. Hourly Fee Rates for Additional Services.

11.25.8. Exhibit H. Professional Services Schedule.

11.25.9. Exhibit I. Detailed Scope of A/E's Services, including list of deliverables.

11.25.10. Exhibit J. BIM to FM Services.

11.25.11. Exhibit K. Owner's Project Requirements ("OPR").

11.25.12. Exhibit L. BIM Protocols.

11.25.13. Exhibit M. A/E's response to the Request for Qualifications, dated July 31, 2018.

11.25.14. Exhibit N. Initial Approved HUB Subcontracting Plan.

11.25.15. Exhibit N-1. HUB Subcontracting Plan Form.

11.25.16. Exhibit N-2. HUB Subcontracting Plan PAR Form.

11.26. Survival of Terms. Termination of the Agreement for any reason shall not release A/E from any liability or obligation set forth in the 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, transition, records, audit, property rights, dispute resolution and invoice and verification.

11.27. Approval Not a Release. Approval by TFC shall not constitute nor be deemed a release of the responsibility and liability of A/E, A/E Personnel, its employees, Subcontractors, agents and consultants for the accuracy and competency of the Services and Work Product; nor shall such approval be deemed to be an assumption of such responsibility by TFC for any defect, error or omission in the Services, Work Product or other Documents prepared by A/E, A/E Personnel, its employees, subcontractors, agents and consultants. TFC's approval or acceptance of A/E's tasks and/or Services will not release A/E from any liability for such tasks and/or Services because TFC is, at all times, solely relying upon A/E's skill, knowledge and expertise in performing its tasks and Services.

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11.28. Entire Agreement and Modification. This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof, superseding all prior or contemporaneous agreements and negotiations between them. TFC shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind not expressly set forth herein and A/E agrees is it not acting in reliance on any such extraneous matters. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistently with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification, renewal, extension, or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

TEXAS FACILITIES COMMISSION

By: _____

Mike Novak

Executive Director

Date of Execution: 11-28-18

G.C. NRG

Dir. MW

D.E.D. M

KIRKSEY ARCHITECTS, INC. dba KIRKSEY

By: _____

Terry Greiner

Principal in Charge

Date of Execution: 11.26.18

EXHIBITS CD