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AMENDMENT NO. 1
TO THE
CONSULTANT AGREEMENT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
ARUP ADVISORY, INC.

THIS AMENDMENT NO. 1 is entered into by and between the Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 and Arup Advisory, Inc., located at 77 Water Street, Floor 5, New York City, New York 10005 (hereinafter referred to as "Consultant") (hereinafter collectively referred to as the "Parties") to amend the original Consultant Agreement (hereinafter referred to as the "Agreement").

WHEREAS, on May 17, 2017, the Texas Facilities Commission (hereinafter, the "Commission") authorized the award of certain Consultant Services Agreements pursuant to Commission Policy Article III (b); and

WHEREAS, on May 26, 2017 the Parties entered into that one certain *Consultant Agreement between Texas Facilities Commission and Arup Advisory, Inc.*, TFC Contract No. 17-070-000; and

WHEREAS, pursuant to Texas Government Code, § 2254.028 (a) (3), TFC received a finding of fact stating that the consulting services are necessary;

WHEREAS, subject to Agreement Section 2.01, Duration, the Parties desire to extend the Agreement for an additional two (2) year period commencing on September 1, 2019 and ending on August 31, 2021 (hereinafter referred to as the "Renewal Period"); and

WHEREAS, Commission Policy Article III (b) allows funding at the same level in this Renewal Period, as during the original Duration, as addressed in ARTICLE III, Section 3.01 (a), Contract Limit and Fees and Expenses; and

WHEREAS, subject to Contract Article II, Term, Section 2.1, Contract Award, and Article X, Miscellaneous Provision, Section 10.18, Entire Contract and Modification, as that Section is re-numbered, below, the Parties now desire to exercise the option to extend the Term for the period September 1, 2019 through August 31, 2021, and to provide funding for services to be performed during that period; and

WHEREAS, TFC has determined to modify the Contract to include additional provisions, terms and conditions that have been adopted subsequent to the execution of the Contract and/or any Amendment(s) thereto, in order to reflect the will of the Texas Legislature or to comply with action(s) or requirement(s) of the State Auditor's Office, the Office of the Attorney General, the Comptroller of Public Accounts, and/or other authorizing entities of the state;

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NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. The Parties agree to modify ARTICLE II – TERM, Section 2.01, Duration, by deleting the paragraph and replacing it Section 2.01, Duration, as follows:

"2.01. **DURATION.** This Agreement shall be effective as of the date executed by the last Party to sign and shall have an Initial Term commencing on the effective date and continuing through August 31, 2019 (hereinafter referred to as the "Initial Term"). By executing this Amendment No. 1, the Parties exercise their option to renew the Agreement for the term commencing September 1, 2019, and continuing through August 31, 2021 (hereinafter referred to as the "Renewal Period") . No further renewal option is authorized. The Renewal Period shall be governed by the same provisions, terms and conditions as the Agreement and by the additional provisions, terms and conditions included in this Amendment No. 1."

2. The Parties agree to modify ARTICLE II – TERM, Section 2.01, Duration, by adding Sections 2.04 and 2.05, as follows:

"2.04 **RIGHTS UPON TERMINATION OR EXPIRATION OF AGREEMENT.** In the event that the Agreement is terminated for any reason, or upon its expiration, TFC shall retain ownership of all associated work products and documentation obtained from the Consultant under this Agreement.

2.05. **NO LIABILITY UPON TERMINATION.** If this Agreement is terminated for any reason, TFC and the State of Texas shall not be liable to Consultant for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260."

3. The Parties agree to modify ARTICLE III – CONSIDERATION, Section 3.01, Contract Limit and Fees and Expenses, Subsection (a), so that it reads in its entirety as follows:

"3.01. **CONTRACT LIMIT AND FEES AND EXPENSES.** (a) During the Initial Period, as defined in Section 2.01, the total amount of the Agreement shall not exceed the sum of Four Hundred Thousand and No/100 Dollars ($400,000.00), inclusive of reimbursable expenses. Likewise, during the Renewal Period, as defined in Section 2.01, the total amount of the Agreement shall not exceed the sum of Four Hundred Thousand and No/100 Dollars ($400,00.00), inclusive of reimbursable expenses. Any unexpended balance of funding for the Initial Period of the Agreement shall expire Saturday, August 31, 2019 at 11:59:59 PM. All fees and expenses that may be payable pursuant to this Agreement shall be as set forth and specified in each Assignment and will be determined as a result of negotiations between the Parties based upon the rates specified in Exhibit B-1 – Fee Schedule and services to be rendered for the specific Project. Exhibit B-1 – Fee Schedule is attached hereto and incorporated herein for all purposes."

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4. The Parties agree to modify ARTICLE VI – WARRANTIES AND REPRESENTATIONS BY Consultant, by adding Sections 5.12 through and including 5.18, which shall read in their entirety as follows:

"5.12. **ENTITIES THAT BOYCOTT ISRAEL.** Pursuant to Section 2270.002 of the Texas Government Code, Consultant certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of this Agreement. Consultant shall state any facts that make it exempt from the boycott certification.

5.13. **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 Consultant is on the above-referenced list the Agreement will be considered void or voidable and TFC will not be responsible to pay Consultant for any work performed.

5.14. **CERTIFICATION CONCERNING RESTRICTED EMPLOYMENT FOR FORMER STATE OFFICERS OR EMPLOYEES UNDER GOVERNMENT CODE § 572.069.** Consultant certifies that it has not employed and will not employ a former TFC or state officer who participated in a procurement or contract negotiation for TFC involving Consultant within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose service or employment ceased on or after September 1, 2015.

5.15. **DISASTER RELIEF CONTRACT VIOLATION.** Under Sections 2155.006 and 2261.053, Texas Government Code, Consultant 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.

5.16. **NO CONFLICTS.** Consultant represents and warrants that Consultant has no actual or potential conflicts of interest in providing services to the State of Texas under this Agreement and that Consultant's provision of services under this Agreement would not reasonably create an appearance of impropriety.

5.17. **EXCLUDED PARTIES.** Consultant certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

5.18. **SUSPENSION AND DEBARMENT.** Consultant certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration."

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5. The Parties agree to modify ARTICLE X – MISCELLANEOUS PROVISIONS, by adding Subsection 10.03 (a), Requirement to Utilize HUB Compliance Reporting System, as follows:

"10.03 (a) **REQUIREMENT TO UTILIZE HUB COMPLIANCE REPORTING SYSTEM.** Pursuant to Texas Administrative Code, Title 34 §§ 20.85(f)(l)(2) and 20.287(b), TFC administers monthly HUB Subcontracting Plan ("HSP") to include the Progressive Assessment Report ("PAR") compliance monitoring through a HUB Compliance Reporting System known as B2G. Consultant and Consultant's Subcontractors/Subconsultants must submit required PAR information into the B2G system as a condition of payment. Any delay in the timely submission of PAR information into the B2G system will be treated as a deficiency and the payment request will be subject to suspension until such deficiency has been resolved."

6. The Parties agree to modify ARTICLE X – MISCELLANEOUS PROVISIONS, Section 10.09, Notices, to change the Consultant contact information to the following:

"For CONSULTANT: Arup Advisory, Inc.
Attention: Ignacio Barandiaran, Principal
77 Water Street, Floor 5
New York City, New York 10005
Phone: (415) 946-0202
E-Mail: Ignacio.barandiaran@arup.com"

7. The Parties agree to modify ARTICLE X – MISCELLANEOUS PROVISIONS, by inserting Sections 10.18 through and including 10.21, and re-numbering existing Section 10.18, Entire Contract & Modification, as Section 10.21, so that the inserted and existing Sections read in their entirety, as follows:

"10.18. **FALSE STATEMENTS; BREACH OF REPRESENTATIONS.** By signature to this Agreement, Consultant makes all the representations, warranties, guarantees, certifications and affirmations included in this Agreement. If Consultant signs this Agreement with a false statement or it is subsequently determined that Consultant has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Agreement, Consultant shall be in default under this Agreement, and TFC may terminate or void this Agreement for cause and pursue other remedies available to TFC under this Agreement and applicable law.

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

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

10.21. **ENTIRE CONTRACT & MODIFICATION.** This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and 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. 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.

In Witness Whereof, the parties hereto have made and executed this Amendment No. 1 to the Agreement to be effective as of September 1, 2019.

TEXAS FACILITIES COMMISSION	**ARUP ADVISORY, INC.**
By: DocuSigned by: MIKE NOVAK, TFC EXECUTIVE DIRECTOR B1C9FC0A8020417...	By: DocuSigned by: F17B5475A119462...
Mike Novak	Ignacio Barandiaran
Executive Director	Principal
Date of Execution: 08/30/2019 | 1:01 PM CDT	Date of Execution: 08/30/2019 | 12:59 PM CDT

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EXHIBIT B-1

TFC CONTRACT NO. 17-070-000

FEE SCHEDULE

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RFP 303-7-00741 ADDENDUM #4
Consultant for Financial Advisory Services for the Center for Alternative Finance and Procurement

Respondent Name: Ignacio Barandiaran, Arup Advisory Inc

BAFO REQUEST FEE SCHEDULE

Labor Category	Hourly Rate
Managing Senior Financial Advisor	$ 461
Senior Financial Advisor/Subject Matter Expert	$ 354
Financial Advisor	$ 262
Administrative Personnel/Technical Writer	$ 116

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