

**AMENDMENT NO. 2
TO THE
PROFESSIONAL SERVICES AGREEMENT
PART TWO
CONSTRUCTION MANAGER-AGENT SERVICES FOR
CAPITOL COMPLEX PROJECTS
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
BALFOUR BEATTY CONSTRUCTION, LLC**

This Amendment No. 2 to the Professional Services Agreement Part Two Construction Manager-Agent Services for Capitol Complex Project agreement (hereinafter referred to as “Amendment No. 2”) is entered into by and between the Texas Facilities Commission, a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 (hereinafter referred to as “TFC”), as Owner (as defined below and in *2015 Uniform General Conditions*, Section 1.28) and Balfour Beatty Construction, LLC located at 3100 McKinnon, Sixth Floor, Dallas, Texas 75201 (hereinafter referred to as “Construction Manager-Agent” or “CMA”), to amend the original Professional Services Agreement Part Two Construction Manager-Agent Services for Capitol Complex Project Agreement dated March 29, 2017, as amended (hereinafter referred to as the “Agreement”) pursuant Tex. Gov’t Code Ann. §§2166.2525 and §2267.151 (West 2018), and to be effective as of the Effective Date (as defined below).

RECITALS

WHEREAS, on March 29, 2017, the Parties entered into that one certain *Professional Services Agreement Part 2 Construction Manager-Agent Services for the Capitol Complex Project By and Between the Texas Facilities Commission and Balfour Beatty Construction, LLC*; and

WHEREAS, on February 20, 2019, the Parties executed Amendment No. 1 to reflect increased funding and reallocation of certain Contract Manager-Agent Fees; and

WHEREAS, pursuant to Commission award on June 18, 2020, and in keeping with Sections 1.1.32, Fixed Limit of Cost, 2.2.4, TFC Approvals, and 11.29, Entire Agreement and Modification, the Parties now desire to amend the Agreement to reflect increased funding in the amount of \$2,300,000.00, to extend the Duration of the Agreement, and to include provisions adopted by TFC subsequent to the execution of the Agreement and Amendment No. 1 in order to comply with actions or requirements of the Texas Legislature, the State Auditor’s Office, the Office of the Attorney General, the Comptroller of Public Accounts, and for such other purposes as are addressed herein;

NOW THEREFORE, the Parties hereby agree as follows:

1. Unless clearly provided otherwise herein, all terms and phrases in initial caps herein shall have the same meaning as the terms and phrases with initial caps in the Agreement.

2. The Parties agree to amend ARTICLE I – DEFINITIONS, by adding the following definition.

“*HUB Compliance Reporting System* means the Texas Facilities Commission Historically Underutilized Business ("HUB") online reporting system located at <https://tfc.gob2g.com>. The *HUB Compliance Reporting System* is used to maintain business records documenting compliance with the HUB Subcontracting Plan ("HSP") by submission of monthly Progress Assessment Reports. See Section 11.3, Historically Underutilized Businesses ("HUBs").”

3. The Parties agree to amend ARTICLE III – TERM AND TERMINATION, by deleting Section 3.1, Duration, in its entirety and replacing it with Section 3.1, as follows.

“3.1. Duration. This Agreement shall be effective as of the Effective Date and shall terminate on August 31, 2022, unless extended by the Parties by amendment to this Agreement or terminated earlier, as provided below.”

4. The Parties agree to modify ARTICLE IV – CONSIDERATION; PAYMENT CONDITIONS, by deleting Section 4.1.1, Construction Manager Agent Fees, in its entirety and replacing it with Section 4.1.1, as follows.

“4.1.1. Construction Manager-Agent Fees. In exchange for the timely delivery of the Professional Services as specified by this Agreement, CMA shall be paid a fee in an amount of Twenty-Two Million Ninety-Five Thousand Nine Hundred Twenty and No/100 Dollars (\$22,095,920.00), which includes a lump sum fee for services of Twenty-One Million One Hundred Ten Thousand Three Hundred Ninety-Four and No/100 Dollars (\$21,110,394.00), reimbursable expenses not to exceed the amount of Zero and No/100 Dollars (\$0.00), and TFC controlled contingency not to exceed the amount of Nine Hundred Eighty-Five Thousand Five Hundred Twenty-Six and No/100 dollars (\$985,526.00). Payment shall be in accordance with CMA’s Revised Fee Schedule and Staffing Plan, incorporated by Amendment No. 1 as “Exhibit F-1,” and based on sixty-two (62) months of service.”

5. The Parties agree to amend ARTICLE VI – WARRANTIES AND REPRESENTATIONS BY CMA – by adding the following eight (8) clauses.

“6.1.21. No Conflicts. CMA represents and warrants that CMA has no actual or potential conflicts of interest in providing services to the State of Texas under this Agreement and that CMA’s provision of services under this Agreement would not reasonably create an appearance of impropriety.

6.1.22. Disaster Relief Contract Violation. Under Sections 2155.006 and 2261.053 of the Texas Government Code, CMA certifies that the individual or business entity

named in the response or 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.

6.1.23. Excluded Parties. CMA certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

6.1.24. Suspension and Debarment. CMA 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.

6.1.25. Entities that Boycott Israel. Pursuant to Section 2270.002 of the Texas Government Code, CMA 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. CMA shall state any facts that make it exempt from the boycott certification.

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

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

6.1.28. Use of State Property. CMA is prohibited from using State Property for any purpose other than performing services authorized under the Agreement. State Property includes, but is not limited to: TFC's office space, identification badges, TFC information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TFC issued software, and the TFC Virtual Private Network (VPN client)), and any other resources of TFC. CMA shall not remove State Property from the continental United States. In addition, CMA may not use any computing device to access TFC's network or e-mail while outside of the continental United States. CMA shall not perform any maintenance services on State Property unless the Agreement expressly

authorizes such services. During the time that State Property is in the possession of CMA, CMA shall be responsible for (i) all repair and replacement charges incurred by TFC that are associated with loss of State Property or damage beyond normal wear and tear; and (ii) all charges attributable to CMA's use of State Property that exceeds the scope of the Agreement. CMA shall fully reimburse such charges to TFC within ten (10) calendar days of CMA's receipt of TFC's notice of amount due. Use of State Property for a purpose not authorized by agreement shall constitute breach of contract and may result in termination of the Agreement and the pursuit of other remedies available to TFC under contract, at law, or in equity."

6. The Parties agree to amend ARTICLE XI – MISCELLANEOUS PROVISIONS, as follows.

6.1. The Parties agree to add the following provision as Subsection 11.3.1.

"11.3.1. Requirement to Utilize HUB Compliance Reporting System. Pursuant to Texas Administrative Code, Title 34 §§ 20.85(f)(1)(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. CMA and CMA's Subcontractors must submit required PAR information into the B2G system."

6.2. The Parties agree to amend Section 11.8, Notices, by deleting the section in its entirety and replacing it with Section 11.8, as follows.

"11.8 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, 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 Division
1711 San Jacinto Boulevard, Suite 400
Austin, Texas 78701

Copy: Texas Facilities Commission
Attention: Facilities Design and Construction Division
1711 San Jacinto Boulevard, Suite 200
Austin, Texas 78701
John.Raff@tfc.state.tx.us

If to CMA: Balfour Beatty Construction, LLC
Attention W. Pleas Mitchell, Jr., President, Texas and Arizona Divisions
3100 McKinnon, Sixth Floor
Dallas, Texas 75201
Email: pmitchell@balfourbeattyus.com

Copy: Balfour Beatty Construction, LLC
Attention: Jeffrey A. Brannen, SVP, Chief Legal Officer,
Texas and Arizona Divisions
3100 McKinnon, Sixth Floor
Dallas, Texas 75201
Email: jbrannen@balfourbeattyus.com

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

6.3. The Parties agree to add the following clause as Subsection 11.10.1.

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

6.4. The Parties agree to add the following three clauses as Sections 11.30, 11.31, and 11.32.

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

11.31. Abandonment and Default. If CMA 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 CMA will not be considered in the re-solicitation and may not be considered in future solicitations for the

same type of work.

11.32 Antitrust and Assignment of Claims. CMA represents and warrants that neither CMA nor any firm, corporation, partnership, or institution represented by CMA, 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. CMA assigns to the State of Texas all of CMA's rights, title, and interest in and to all claims and causes of action CMA may have under the antitrust laws of Texas or the United States for overcharges associated with the Agreement.”

7. The Parties agree to amend EXHIBIT N – OWNER’S REQUIREMENTS OF INSURANCE, as follows.

7.1. Section 1.03.2 is deleted in its entirety and replaced with subsection 1.03.2, as follows.

“1.03.2. In accordance with Texas Labor Code §406.096(b), CMA shall require each Subcontractor to certify in writing to the CMA that said Subcontractor provides workers’ compensation and employers’ liability insurance for all of Subcontractor’s employees employed on this public project. Owner is entitled, upon request and without expense, to receive copies of Subcontractor’s written certifications.”

7.2. In paragraph 1.14. (16) (ii), “Carol.Palermo@TFC.State.Tx.US,” is deleted and replaced with “Insurance@TFC.state.tx.us.”

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TFC Contract No. 17-042-000
Amendment 2
Balfour Beatty Construction LLC
RFQ No. 303-6-01255
Project No. 16-018-8001

8. All other terms and conditions of the Agreement not expressly amended herein shall remain in full force and effect.

9. This Amendment No. 2 shall be effective as of the date of the last Party to sign it.

TEXAS FACILITIES COMMISSION

BALFOUR BEATTY CONSTRUCTION, LLC

By:  B1C9FC0A0020417...

By:  527C309E36E74CA...

Mike Novak

Louis Saksen

Executive Director

Project Executive

Date of Execution: 07/29/2020 | 1:19 PM CDT

Date of Execution: 07/29/2020 | 12:10 PM CDT

GC 

Dir 

DED 