



PROFESSIONAL SERVICES AGREEMENT  
CONSTRUCTION MANAGER-AGENT SERVICES FOR  
CAPITOL COMPLEX PROJECTS

BETWEEN

THE TEXAS FACILITIES COMMISSION

AND

BALFOUR BEATTY CONSTRUCTION, LLC

**PROFESSIONAL SERVICES AGREEMENT**

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**THE TEXAS FACILITIES COMMISSION**

**AND**

**BALFOUR BEATTY CONSTRUCTION, LLC**

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 Balfour Beatty Construction, LLC (hereinafter referred to as “Construction Manager-Agent” or “CMA” as defined below), located at 3100 McKinnon, Seventh Floor, Dallas, Texas 75201, enter into the following agreement for construction management-agent services (hereinafter referred to as the “Agreement”) pursuant to Tex. Gov’t Code Ann. Ch. 2269, Subch. E, Construction Manager-Agent Method, 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 programming and project management services of a consultant for its Capitol Complex Projects to be located in Austin, Texas; and

WHEREAS, in reliance upon the representations made by CMA in its response to TFC’s Request for Qualifications, RFQ 303-6-01255, dated March 25, 2016, TFC has determined that CMA has demonstrated its competence and qualifications to provide the requested services; and

WHEREAS, CMA has agreed to provide the services contemplated hereunder; and

WHEREAS, TFC has agreed to compensate CMA 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. Unless specifically provided otherwise herein, all words and phrases in this Agreement in initial caps shall have the meanings set out in this Section 1.1. In the event of any conflict between the definitions in the *2015 Uniform General Conditions* (hereinafter referred to as “UGC”), and the *Supplementary General Conditions*, a digital copy of each of which is incorporated herein by reference as TFC’s contract provisions to be administered by CMA, in portable document format (“PDF”) on the compact disk attached hereto and labeled “TFC Contract No. 16-102-000 / Balfour Beatty Construction, LLC / Exhibits CD” (hereinafter referred to as the “Exhibits CD”), and named therein as “Exhibit A,” and “Exhibit B,” respectively, in the A/E Guidelines (as defined in Section 1.1.4, below), or in any other document referenced herein and incorporated for all purposes, as

applicable, and the definitions in this Agreement, the definitions used in this Agreement shall control to the extent of the conflict.

1.1.1. *Additional Service(s)* 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, and, as applicable, CMA and/or Master A/E, where expressly required or allowed herein. 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 CMA from fulfilling its obligations to perform in accordance with this Agreement.

1.1.3. *Architect/Engineer(s)* means, individually or collectively, the architectural and engineering service providers contracted by TFC to perform all of the professional architectural and engineering design services, and any licensed professionals and other personnel working under the Architect/Engineer's supervision, or otherwise engaged by TFC to prepare the design for all or a portion of the Projects.

1.1.4. *A/E Guidelines* means TFC Architectural/Engineering Guidelines Edit Date April 16, 2012, a digital copy of which is incorporated herein by reference for all purposes in PDF on the Exhibits CD and named therein as "Exhibit C."

1.1.5. *Building Information Model* or *BIM* means a computable multi-dimensional representation of the physical and functional characteristics of the Projects' 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 Projects, and for TFC's use throughout the life-cycle of the facilities.

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

1.1.7. *Capitol Complex Master Plan* or *Master Plan* means the 2016 Texas Capitol Complex Master Plan adopted in March 23, 2016, and any Approved updates thereto, which is incorporated by reference as if fully stated herein as "Exhibit D."

1.1.8. *Capitol Complex Projects* means the projects described in Section 2.1.1. below.

1.1.9. *Cause* means to direct, manage and oversee on behalf of TFC and in a manner consistent with the terms of this Agreement (including Section 5.2.11 herein) as reasonably necessary to accomplish or produce an action and/or deliverable by another service provider that is required by or reasonably inferable from the service provider's agreement with TFC. The word

“Cause,” as defined herein, shall not be construed to give rise to a claim or dispute between CMA and any service provider not in privity with CMA.

1.1.10. *CMA Agreement, Contract, or Agreement* means this contract and all of the exhibits attached hereto and which are expressly identified herein to be incorporated as a part hereof, in addition to all amendments or supplements that may be mutually agreed upon by TFC and CMA, and any changes that may become effective in accordance with the provisions of this Agreement, from time to time.

1.1.11. *CMA Personnel* means all CMA’s staff, Subcontractors, subconsultants and vendors of any tier who contract to perform any of CMA’s obligations or duties hereunder, as shown in the List of CMA’s Key Personnel incorporated herein by reference for all purposes as “Exhibit E.”

1.1.12. *CMA Project Manager* means the individual designated by CMA, and who must be Approved, as the contact person with specific authority to properly supervise and direct the duties and responsibilities of CMA, on behalf of CMA, pursuant to the terms and conditions of this Agreement, and who shall have decision-making authority to bind CMA with respect to the Services rendered in connection with this Agreement or the Projects.

1.1.13. *CMA’s Initial Fee Schedule and Staffing Plan* is that fee schedule that provides for payment of CMA’s fee and includes CMA’s plan for staffing to be covered by CMA’s Fee during the Conceptual Design Phase, as described in CMA’s Initial Fee Schedule and Staffing Plan incorporated herein by reference for all purposes as “Exhibit F.”

1.1.14. *Communication Protocol(s)* means the communication and tracking procedures to be utilized for interaction and reporting between TFC, CMA, Master A/E, the Construction Managers, Contractors, any subcontractors, SSE, and the Architect/Engineers, including but not limited to, the use of any EPMCS utilized by TFC for the Projects.

1.1.15. *Conceptual Design Package(s) or CDP(s)* means one or more sets of documents developed by Master A/E, 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 a 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 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.

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 the Construction Manager, including, as applicable, all exhibits to the Construction Contract, Owner's solicitation, addenda, notice(s) to bidders, Construction Manager's guaranteed maximum price(s) ("GMP"), 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 Cost Limitation* means the maximum amount of funding that has been authorized by and is available to Owner to pay Construction Manager for the services and Work required under the Construction Contract, including any preconstruction services fee, GMP (including all construction management fees therein) and all change orders. The Construction Cost Limitation may be adjusted by Owner in its sole discretion from time to time as further assessments, and design and construction cost estimates are developed by the Project Team.

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

1.1.21. *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 the Construction Manager for the Architect/Engineer's review, such as shop drawings, product data, samples, and other similar submittals.

1.1.22. *Construction Manager-Agent* or *CMA* means Balfour Beatty Construction, LLC, the service provider engaged hereunder as TFC's fiduciary agent to assist TFC with management and coordination of the overall design and construction program for the Capitol Complex Projects. TFC will separately procure the professional design services of an Architect/Engineer for each of these Projects to prepare the Construction Documents for each respective Project. TFC will also separately procure the construction management services of a Construction Manager-at-Risk for each of the respective Projects. Therefore, and for purposes of clarity, the use of the title "Construction Manager-Agent" to describe the undersigned service provider is not intended to characterize such service provider as a construction manager-agent for a single project, as is contemplated by Tex. Gov't Code Ann. Ch. 2269, Subch. E; but rather it is intended to describe the service provider's role as a *program manager* for a series of construction projects to assist TFC with services procured in the same manner as provided in Tex. Gov't Code Ann. Ch. 2254, Subch. A, for management and coordination of the overall design and construction program for all of TFC's Capitol Complex Projects.

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

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

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 CMA in the performance of the Professional Services, which are specified to be delivered by CMA pursuant to the terms of this Agreement. Copies of and/or electronic access to any Deliverable to be provided to TFC hereunder, together with any transmittal or other information related to it, shall, when directed by TFC, be simultaneously issued and provided to TFC's Master A/E. For the avoidance of doubt the term "Deliverables" does not include deliverables of other members of the Project Team or other project participants – whether reviewed by or delivered by CMA or not, although CMA's written studies of such other's deliverables shall constitute Deliverables of CMA.

1.1.26. *Design Development Phase* means that phase of a Project that follows the Schematic 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 Program* or *Program* means, collectively, the overall goals, the design objectives, the aesthetic considerations, the functional requirements, and the design and construction for the Capitol Complex Projects, 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 Projects; and (iii) the development of PMP and each PIP.

1.1.28. *Drawings* means the graphic and pictorial portions of the documents developed in connection with the Design Program, CDPs, 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.

1.1.29. *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.

1.1.30. *EPMCS* means the Approved electronic project management control system, which may include one or more integrated software systems as recommended by CMA and Approved by Owner.

1.1.31. *Final Completion* means that stage of completion by which all “punch-list” items identified in connection with the Substantial Completion of a Project have been corrected, completed, or otherwise addressed to the satisfaction of Owner, CMA, Master A/E, Architect/Engineer, all building inspectors, and all other Governmental Authorities, as evidenced by the issuance of a certificate of Final Completion signed by CMA, Construction Manager and Architect/Engineer.

1.1.32. *Fixed Limit of Cost* means that portion of the Program Budget for the Projects, as Approved by Owner, for the design and construction, and procurement of furniture, fixtures and other equipment (“FFE”) to be installed in the Project(s). Fixed Limit of Cost shall be established upon Approval of the Program Budget. The Fixed Limit of Cost may be adjusted up or down at any phase of a Project by Owner, in Owner’s sole discretion, whether by use of any contingency budgeted by Owner or otherwise.

1.1.33. *GMP Bidding and Negotiation Phase* means that phase of a Project that follows or occurs near the conclusion of the Construction Documents Phase, and culminates in the preparation and issuance of construction bidding documents as Approved by Owner for Construction Manager’s use in developing and submitting a final GMP proposal, including the incorporation of any substitutions, alternates, allowances, value engineering proposals, or other modifications that Owner may, as a result of the bidding and negotiation process, Approve for inclusion in the Construction Documents.

1.1.34. *Governmental Authorities* means all federal, state, and local governmental entities having jurisdiction over the Projects.

1.1.35. *Hourly Fee Rates* shall mean the rates set forth in CMA’s Hourly Fee Rates for Additional Services, incorporated herein by reference for all purposes as “Exhibit G,” for Additional Services to be performed by CMA.

1.1.36. *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 Tex. Gov’t Code Ann. Ch. 469.

1.1.37. *Master A/E* means the service provider TFC will engage pursuant to Tex. Gov’t Code Ann. Ch. 2254 as 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.

1.1.38. *Notice of Authorization or NOA* means the written authorization to proceed to the next phase of CMA's Services. Notice of Authorization is to be distinguished from a Notice to Proceed.

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

1.1.40. *Notice to Proceed or NTP* means the written authorization by TFC to proceed with commencement of Services.

1.1.41. *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.

1.1.42. *Pay Application* means the application for payment submitted by CMA as discussed in Article IV below.

1.1.43. *Person* means an individual, firm, partnership, corporation, association, and any other legally recognized entity.

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

1.1.45. *Professional Services Schedule or Schedule*, means the Schedule incorporated herein by reference 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 NTP or subsequent NOA. At the discretion of the TFC Project Manager and as mutually agreed upon with CMA, the Professional Services Schedule may be revised and defined with more detail as the Projects develop.

1.1.45.1. The parties acknowledge that upon execution of this Agreement, the Schedule will not reflect the date of issuance of NTP, nor whether the Projects 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.

1.1.45.2. 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 deemed added to the Exhibits CD.

1.1.46. *Program Budget* means the budget developed and maintained by CMA for all aspects of the Design Program and the Projects. The Program Budget includes itemized costs for the design and construction for each of the Projects, and procurement of FFE to be installed in

each of the Project(s), all land acquisition costs, and all legal fees and other expenditures required of TFC to develop and implement the Design Program. The Program Budget shall appropriately allocate each applicable component of the Approved spending limit to specific line items of cost for each of the Projects and shall be presented to TFC for establishment of each Project's Fixed Limit of Cost and Construction Cost Limitation. The Program Budget may be adjusted from time to time by Owner in its sole discretion as further assessments, and design and construction cost estimates are developed by the Project Team.

1.1.47. *Program Definition Phase* means the initial phase of the Project that precedes the Conceptual Design Phase and culminates in the issuance of the Program Management Plan and the Project Implementation Plan ("PIP") specific to each of the Projects.

1.1.48. *Program Management Plan* or *PMP* means a management plan for all Projects in the Design Program, to be developed by CMA and submitted to TFC within 120 days after the Effective Date, which PMP shall also include PIPs specific to each of the Projects, as more fully described in Article II.

1.1.49. *Program Master Schedule* means a comprehensive schedule prepared and maintained by CMA for TFC, incorporating the Project Schedules for each of the Projects, and integrating all major Project activities, including the following: (i) phasing and alternatives for accelerating completion based on detailed phasing plans developed by CMA; (ii) establishment of schedule milestones and procedure relationships to a level of detail acceptable to TFC; and (iii) identification of predecessor relationships among activities between project boundaries constructed under separate contracts.

1.1.50. *Progress Assessment Report* or *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.

1.1.51. *Project(s)* means the Capitol Complex Projects which are planned for the Capitol Complex Sites and for which the Services under this Agreement are to be performed, as further defined in Article II.

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

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

1.1.54. *Project Schedule(s)* shall mean the schedule or schedules prepared by CMA and Approved by Owner for execution of each of the Projects.

1.1.55. *Project Team(s)* means CMA, Master A/E, SSE, Architect/Engineer(s), Construction Manager(s), and any separate Contractors, consultants, or other service providers

employed by TFC for the purpose of planning, programming, design, construction, and commissioning of the Projects. The constitution of the Project Team(s) may vary for each, and at different phases, of the Projects. The Project Team(s) will be designated by TFC and may be modified from time to time by TFC.

1.1.56. *Reimbursable Expenses* means those reasonable and necessary out-of-pocket costs and expenses incurred by CMA for the provision of the Professional Services that are Approved.

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

1.1.57.1. 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;

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

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

1.1.58. *Schematic Design Phase* means that phase of a Project that follows the Conceptual Design Phase, culminating in the Architect/Engineer's preparation and issuance of Approved preliminary drawings and other documents, including but not limited to a site plan and preliminary building plans, sections and elevations, study models, perspective sketches, digital models, and alternative material selections.

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

1.1.60. *Services* means the services provided by CMA, CMA Personnel, and/or by Subcontractors and/or consultants retained by CMA for the Projects.

1.1.61. *Site(s)* means the lands, areas, and/or buildings generally described in Article II as the Capitol Complex Sites, and indicated in the Contract Documents as being furnished by TFC as the Sites upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by TFC which are designated for the use of the Contractor, as further described in Article II.

1.1.62. *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 Projects.

1.1.63. *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.

1.1.64. *Standard of Care* means CMA's Standard of Care defined in Section 6.1.4.

1.1.65. *Subcontract* means any agreements between CMA and a Subcontractor.

1.1.66. *Subcontractor* means any Person that enters into an agreement with CMA to perform any part of the Professional Services required under this Agreement.

1.1.67. *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, CMA and Architect/Engineer 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.

1.1.68. *TFC Project Manager(s)* means the employee(s) of TFC authorized and assigned to communicate with and act on TFC's behalf to administer CMA'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: (i) acting on the recommendations and advice of CMA and Master A/E in connection with the Capitol Complex Projects; (ii) managing TFC's review and Approval of the Professional Services; and (iii) operating as the point of contact between TFC, Using Agency (if any), and CMA.

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

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

1.1.71. *Work Product* shall mean all work product, including all instruments of service, submittals, Drawings, Specifications, Project Manuals, CDPs, 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, and any contributions

thereto, 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 CMA in a manner strictly adhering to CMA's limited use and ownership rights as set forth in this Agreement.

1.1.72. *Worksite(s)* has the same meaning as the defined term "Site(s)," as set forth in Section 1.1.61, above.

## II. DESCRIPTION OF PROJECTS AND SCOPE OF SERVICES.

2.1 Description of Projects. The Projects include all aspects of phase 1 of the Master Plan, as may be amended by TFC in consultation with CMA, from time to time, for the planning, development, architecture, engineering, design, procurement, demolition, renovation and construction of facilities and improvements on the Sites described in Section 2.1.2, below. The foregoing shall not be interpreted to require CMA to render Additional Services required to implement TFC's amendments to the phase I of the Master Plan without compensation as provided for in Section 4.5, below. The Projects are described as follows.

2.1.1. Capitol Complex Projects. The Capitol Complex Projects include the following:

2.1.1.1. one approximately 605,000 gross square foot ("GSF") building at Congress Avenue and Martin Luther King Boulevard;

2.1.1.2. one approximately 421,000 GSF building at Congress Avenue and 17th Street;

2.1.1.3. five levels of underground parking under Congress Avenue from 16th Street to Martin Luther King Boulevard;

2.1.1.4. one capitol complex physical plant annex at the Sam Houston Building;

2.1.1.5. walkable underground thermal utility tunnels from the physical plant annex to new building at Congress Avenue and 17th Street; and

2.1.1.6. landscaped pedestrian mall on Congress Avenue from 16th Street to Martin Luther King Boulevard.

2.1.2. Development Sites. The Sites planned for development of the Projects are as follows:

2.1.2.1. State of Texas Parking Lot #7 (across from the Texas State History Museum): One full block bounded by North Congress Avenue, Martin Luther King, Jr. Boulevard, Brazos Street, and 18th Street;

2.1.2.2. State of Texas Parking Lot #2 (directly west of the Lyndon B. Johnson (“LBJ”) Building): One half block bounded by North Congress Avenue, 17th Street, the LBJ Building, and 16th Street;

2.1.2.3. North Congress Avenue Right of Way extending from Martin Luther King, Jr. Boulevard to 15<sup>th</sup> Street;

2.1.2.4. parking lot and service yard west of the Sam Houston Building (“SHB”): One half block bounded by SHB, 14<sup>th</sup> Street, San Jacinto Boulevard, and 13<sup>th</sup> Street; and

2.1.2.5. additional street rights of way including:

2.1.2.5.1. 14<sup>th</sup> Street from Brazos Street to San Jacinto Boulevard;

2.1.2.5.2. Brazos Street from 15<sup>th</sup> Street to 14<sup>th</sup> Street;

2.1.2.5.3. 15<sup>th</sup> Street from Congress Avenue to Brazos Street; and

2.1.2.5.4. 16<sup>th</sup> Street from Congress Avenue to Brazos Street.

2.2. Scope of Services. CMA agrees to timely deliver the Professional Services described below and labeled on the Exhibits CD as CMA’s Detailed Scope of Services Dated June 3, 2016, “Exhibit I,” incorporated herein for all purposes, pursuant to the Professional Services Schedule, Exhibit H.

2.2.1. General Duties for Performance of Services.

2.2.1.1. CMA shall furnish or provide the consultancy, managerial, budget control, scheduling, and all other Services necessary and/or reasonably inferable from the description of the Services herein, and in CMA’s Detailed Scope of Services Dated June 3, 2016, Exhibit I; the Project Analysis (or the equivalent thereof); the Design Program; the Master Plan; and all other relevant data for the successful planning, design, and construction of the Projects in accordance with TFC’s requirements, as outlined in TFC’s relevant data defining the Projects. The Professional Services shall include basic Services, plus Additional Services as may be authorized by TFC.

2.2.1.2. CMA shall, in accordance with its Standard of Care, review 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 CMA prior to being

used by CMA in the performance of the Services. In the event that CMA discovers any discrepancies or defects in the drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied by TFC and other members of the Project Team, CMA will notify TFC of its findings.

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

2.2.1.4. CMA shall, in the performance of the Services, take all necessary precautions to prevent damage by CMA to TFC's property, visible or concealed, including any rights of way, and shall reasonably restore the Sites to the condition existing prior to any damage CMA causes to TFC's property, unless otherwise agreed to with TFC.

2.2.1.5. CMA shall consult with TFC staff, and with any representatives of Using Agency as may be directed by TFC, and become thoroughly familiar with: (i) the Project Analysis, or the equivalent thereof; (ii) the Design Program; and (iii) the Master Plan.

2.2.1.6. CMA shall inspect and timely become thoroughly familiar with the Sites for the Projects.

2.2.1.7. CMA shall review and become thoroughly familiar with any and all relevant and existing Project, Site, and facilities studies and information.

2.2.1.8. CMA shall Cause the appropriate service providers to interface with all utility providers as is reasonably necessary to perform the services required by the service providers' contracts with TFC.

2.2.1.9. CMA shall become familiar with requirements of the technical and design standards of TFC and Using Agency, including, but not limited to, the A/E Guidelines.

2.2.1.10. In performing the Services hereunder, CMA shall consider and make recommendations to Owner concerning the best industry practices for the following:

2.2.1.10.1. methodologies (including incentive based methodologies) to contract design, construction and procurement services;

2.2.1.10.2. Project communications, information management, and document control systems (ensuring full time, continuous access to EPMCS and communication of latest updated project information among all project participants, including Owner, and maintenance of a log of the record date and time of transmittal and receipt of such information as between each sender and recipient);

2.2.1.10.3. quality control processes encompassing applicable code compliance;

2.2.1.10.4. cost and schedule control systems and practices within EPMCS for cost estimating and reporting, including a comprehensive system for tracking and forecasting costs throughout the process of development of designs and construction processes;

2.2.1.10.5. ongoing cost control measures and analysis methodologies; and

2.2.1.10.6. master and detailed scheduling within EPMCS (providing for detailed assignment of responsibility and tracking of performance).

2.2.1.11. CMA understands and acknowledges that CMA has assumed the contractual obligation and fiduciary duty to Owner to advise and assist Owner as Owner's agent in the oversight and management of the Projects, and that CMA shall have authority to manage and communicate with the service providers on Owner's behalf. Unless otherwise directed by Owner, the communications of a service provider with respect to the Services shall be directed to CMA, who shall act as the primary point of contact to Owner for the service providers; provided, CMA shall Cause all service providers to include the TFC Project Manager(s) as a carbon copy recipient on all such communications. Nothing in this Agreement shall be construed to limit or restrict the right of Owner to communicate directly with a 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 CMA or any service provider, or an abrogation of any rights of Owner under this Agreement.

2.2.1.12. Promptly after conclusion of the Conceptual Design Phase for any Project and prior to commencement of any Project's Schematic Design Phase, CMA shall Cause Master A/E and its design team members involved in the development of the Conceptual Design Packages for the Projects to meet with each Architect/Engineer and its design team members to ensure an efficient, coordinated and comprehensive transition of design responsibilities between Master A/E and each Architect/Engineer in an effort to minimize duplication of design-related activities between them. It is agreed, acknowledged, and understood by CMA that the Program requires the Architect/Engineer for each Project to assume, at or prior to commencement of each Project's Schematic Design Phase, full responsibility for the development of the Schematic Design Phase documents, Design Development Phase documents, and the Construction Documents for each respective Project.

## 2.2.2. Detailed Scope of Services.

2.2.2.1. CMA shall, in collaboration with Owner and Master A/E, develop a Program Management Plan that will allow for organized and proper management of all Projects,

including the design and construction phases of each Project, and for all phases of the Design Program. CMA shall prepare and update PMP as appropriate for all Projects in cooperation and in consultation with Owner and Master A/E and the applicable Construction Manager and Architect/Engineer for each Project, with the objective of (i) adhering to the design integrity established in the Approved Conceptual Design Package; (ii) optimizing opportunities for Owner to reduce overall Project costs; and (iii) expedite delivery of the Projects, to the extent reasonably and commercially possible. CMA will Cause the service providers, including the applicable Construction Managers and Architect/Engineers, to confirm in writing their concurrence with PMP and any updates thereto throughout the execution of the Projects. PMP is a dynamic system that will be updated, at a minimum, semi-annually. PMP shall include and incorporate, but not be limited to the following.

2.2.2.1.1. Development and submission of a Program summary for each Project with recommendations for enhanced efficiencies and improvements after comprehensive review and evaluation of: (i) the Design Program for each Project; (ii) the locations and compositions of the user groups of any impacted Using Agency; (iii) the scheduling of consultants and design teams for each phase and each Project; (iv) the sequencing of construction; and (v) the SSE's Site assessments.

2.2.2.1.2. Establishment and implementation of the following protocols: (i) a Communication Protocol which includes a visual organizational chart of key team players and diagrammatic depictions of the flow of communication; and (ii) a decision making and approvals protocol, including a flow chart of team roles and decision making points. The protocols herein shall be continuously managed and updated as service providers and Owner's consultants become involved in the Projects. Facilitate management and tracking of all team communication, including tracking of the status of all actions, items and activities, and the parties responsible therefor, and coordinate with Program Master Schedule and individual Project Schedules during design and construction.

2.2.2.1.3. Coordination of day-to-day operations of the Project Team and other service providers, and Owner's consultants, and the Architectural Representative, as well as conduct and document team meetings to establish and meet the Program Master Schedule.

2.2.2.1.4. Implementation, coordination, and management of EPMCS in consultation with TFC and Master A/E. Prior to implementation of EPMCS for the Program, CMA shall develop an advisory memorandum for Owner describing in detail the construction project management software currently utilized by CMA, and include in such memorandum CMA's recommendations to Owner for a software system based on Owner's requirements set forth below. Further, CMA shall include in such memorandum five (5) owner references currently using the recommended software system. Owner shall have the right to reject CMA's recommended construction project management software and require CMA, at no additional cost to Owner, to adapt and implement Owner's standard EPMCS. Provided, however, Owner's Approval of CMA's recommended construction project management software shall not be withheld without cause.

2.2.2.1.5. Assignment of a key team member as a single point of contact to manage and maintain EPMCS on a daily basis. EPMCS shall provide all project participants and Owner real time access to all Project information and communications throughout the completion of each Project. The recommended EPMCS shall:

2.2.2.1.5.1. provide effective and organized methods of archiving information to facilitate retrieval when needed;

2.2.2.1.5.2. consist of a complete paperless filing and document management with query capabilities across multiple Projects, with ongoing retrieval and support available to Owner;

2.2.2.1.5.3. provide for all alternate project delivery methods allowed by Laws and Regulations;

2.2.2.1.5.4. allow real time access to the all project participants and Owner to all project information and communication, and redline interface and markup capabilities on all documents and drawings;

2.2.2.1.5.5. allow for multiple Projects within the same user interface and database, which will allow for a master report as well as individual Project reports for schedules, costs, changes, communication, and bidding;

2.2.2.1.5.6. allow for multiple funding sources to be tracked and reported through project budgets, contract encumbrances and expenditures;

2.2.2.1.5.7. allow Owner to establish role-based security and assign "titles" to all project participants which will limit access to different team members based on their role on a Project;

2.2.2.1.5.8. allow for facilities maintenance features and capabilities that will provide Owner with continued access to all Project information and communication;

2.2.2.1.5.9. allow for pre-configured and customizable templates with custom fields that allow for online input and queries and searches for standard forms of communication, including but not limited to requests for information, architect's supplemental instructions, submittals, field reports, and standard state forms such as but not limited to change order forms and forms for Pay Applications;

2.2.2.1.5.10. be all inclusive and allow for scheduling, document control, cost and schedule forecasting, and cost-estimating, in one or more integrated software systems, as more fully described in paragraph 2.2.2.1.6;

2.2.2.1.5.11. allow for structured workflow and transaction approvals and for a document management or tracked flowchart approval process for all documents requiring approval and/or action, including but not limited to contractual and financial transactional documents such as change orders and Pay Applications;

2.2.2.1.5.12. include a tracking system and log of all changes, including identification of the team member handling the change, as well as cost and schedule implications;

2.2.2.1.5.13. provide live technical support (service level agreements to be negotiated by CMA and Owner once EPMCS is selected);

2.2.2.1.5.14. include a central vendor contact database that can synchronize with Microsoft Outlook and other commonly used databases; and

2.2.2.1.5.15. provide security for data and transactions to protect Owner's critical infrastructure.

2.2.2.1.6. Implementation, coordination, and management of a state of the art project quality control process, which can be used and followed in a manner that is logically consistent and compatible with EPCMS and considers all aspects of quality from code and functional space program compliance through completion of design for all Projects. CMA will review all construction quality control plan submittals from each Construction Manager and their respective project teams, including engineers, design consultants, and subcontractors for viability and effectiveness. Owner, in its discretion, may require improvements in these plans from any such service provider prior to granting a notice to proceed for design and for construction, separately.

2.2.2.1.7. Implementation, coordination, and management of proven state of the art project cost and schedule control processes and related policies including but not limited to the following:

2.2.2.1.7.1. estimating; cost reporting including a comprehensive system for tracking and predicting the cost of all items of change whether in the design or construction process; independently formulated cost estimates and cash flow projections;

2.2.2.1.7.2. ongoing cost control measures that include the identification of methods to reduce cost, shorten schedule, and/or utilization of substitute materials and systems;

2.2.2.1.7.3. budget analysis methods and identification of strategies for optimum utilization of Owner's limited financial resources; and

2.2.2.1.7.4. master and detailed scheduling (with related responsibility assignment); establishment and routine tracking of completion of all scheduled milestones.

2.2.2.1.8. Development of the integrated master schedule (“IMS”) to engage the selected service providers deemed necessary for the Projects, and require all of them to submit acceptable detailed schedules of their work and services for incorporation into IMS, and to submit accurate schedule status updates on a timely basis.

2.2.2.1.9 Implementation, coordination and management of a Program commissioning plan.

2.2.2.2. CMA shall recommend to Owner and establish PIP to include all appropriate components for the execution and implementation of each of the Projects. CMA shall prepare PIP in cooperation and consultation with Owner with the objective of (i) adhering to the design integrity established in the Approved Conceptual Design Package; (ii) optimizing opportunities for Owner to reduce Project costs; and (iii) shorten Project delivery schedules, to the extent reasonably and commercially possible. CMA shall submit to Owner for Approval a final PIP within 120 days from the date of issuance of Owner’s Written Notice to Proceed. Once the final PIP has been Approved, such date of Approval shall serve as Owner’s notice to CMA to proceed to execute PIP, unless otherwise directed by Owner. PIP shall, at a minimum, be based on and/or include the following:

2.2.2.2.1. preparation of master project sequencing, phasing and partitioning for multiple design and construction teams; and

2.2.2.2.2. development of a Program Budget and Program Master Schedule to be presented for Approval.

2.2.2.3. As CMA develops PMP and PIPs and subsequently begins performance of Services on each of the specific Projects with the service providers, CMA will be responsible for communication, cost, schedule control and oversight, including but not limited to the following tasks and Deliverables.

2.2.2.3.1. Prepare for Owner’s Approval IMS for all Projects, in keeping with schedule milestones Approved by Owner in PIP, to include phasing and alternatives for accelerating completion based upon detailed phasing plans to be prepared by CMA. IMS shall integrate all major project activities and establish milestones and precedence relationships to a level of detail reasonably acceptable to Owner. In addition, CMA shall:

2.2.2.3.1.1. cause the service providers as applicable, to: (i) prepare detailed schedules for the timely completion of their respective activities; (ii) use EPMCS to integrate each Project Schedule into IMS; and (iii) provide regular schedule progress reports (all schedules must be integrated and live via web-based online collaborative system);

2.2.2.3.1.2. update the Project Team at regular Project meetings of the status of IMS and the tasks needed to recover any lost days to maintain the Approved IMS;

2.2.2.3.1.3. continuously and independently evaluate and monitor progress of the Projects and effectively coordinate the design, construction, and procurement activities for the Projects on a day-to-day basis, so as to timely achieve all scheduled milestones in accordance with IMS;

2.2.2.3.1.4. cause service providers and consultants to perform services in a timely fashion and in a manner that supports the Program Budget;

2.2.2.3.1.5. highlight and report on predecessor relationships among activities between project boundaries affecting separate contracts;

2.2.2.3.1.6. keep Owner fully apprised of the status of progress of all major scheduled activities (or such other activities as Owner may specifically direct from time to time), and the occurrence of any events or circumstances that delay or may threaten to delay progress in accordance with IMS. Make recommendations to Owner as necessary to maintain the schedule; and

2.2.2.3.1.7. adjust IMS in the event of a suspension of Work, or suspension of a part or all of the Program.

2.2.2.3.2. CMA shall have a daily presence at one or more of TFC's facilities, the location of which shall be established with TFC's Approval, and shall provide administrative support to Owner's Project Manager. Subject to Owner's Approval during specific phases, CMA shall recommend to TFC the assignment of other Project Team member(s) to be stationed on Site or at one of TFC's facilities. CMA shall provide its own office equipment, computers, software, and office supplies as required at no additional cost to Owner.

2.2.2.3.3. Continually review all elements associated with the Design Program against the Program Budget and IMS, including any amendments or changes thereto, as Approved by Owner from time to time, and including all supporting documentation used in the development and implementation of PMP and PIP and propose alternatives that would accelerate project delivery and reduce costs.

2.2.2.3.4. Oversee the development of the scope of services and Work, solicitations, and review the contracts for the service providers.

2.2.2.3.5. Review qualification submissions, bids and submittals of prospective service providers and make recommendations to Owner as to the acceptance or rejection thereof, as appropriate to the execution of each PIP. Assist Owner in

issuing bid solicitation documents and addenda with respect to the Projects, receiving bids and proposals from and awarding contracts to certain service providers.

2.2.2.3.6. Develop, implement and enforce, all project-specific plans and policies, including PMP and PIP, as necessary to govern the quality, progress and requirements for Work, materials, equipment and services to be delivered or rendered under the Program, and Cause the service providers as applicable, to manage quality of all construction Work according to the accepted Construction Documents established for the execution of the construction of the Projects and the accepted safety plan and quality control plan submitted by the service providers. In particular, and in addition to PMP and PIP, CMA shall implement, comply with and enforce such plans, including but not limited to the following.

2.2.2.3.6.1. A Quality Criteria Plan is a plan developed by CMA establishing a set of minimum requirements describing the means by which each service provider's quality assurance and control plan will ensure that the standard for performance of services and work complies with the contract requirements established therefor. The Quality Criteria Plan shall list all tasks and include applicable procedures, interfaces, (including witness, hold and inspection points), and documents recording attainment of quality. Prior to Owner's issuance of a notice to proceed to a service provider for any design or construction efforts, CMA shall Cause the service providers to reconcile their submitted quality control plans to the Quality Criteria Plan as necessary to bring all such plans into conformance with the Quality Criteria Plan. The Quality Criteria Plan shall include methods to reconcile identified quality assurance and quality control items with Project requirements, the Program Budget and the Program Master Schedule.

2.2.2.3.6.2. CMA shall establish the minimum requirements for, and Cause to be produced, a template for a materials management plan specific to construction and installation at each Project site that covers all activities associated with materials supplied by each applicable service provider, as appropriate. The material management plan shall require each applicable service provider to list activities in a logical order and include references to applicable procedures, plans, and documents/reports to be maintained. Some of these activities would include but not limited to material receipt, secure and insured storage, manufacturers' storage, issue and surplus, and staging, handling and protection requirements, including the type of system (automation) to be used to monitor these activities:

2.2.2.3.6.3. CMA shall provide a warranty management and follow-up plan in matrix form to include, at a minimum, the following items:

2.2.2.3.6.3.1. list of all items, equipment, materials under warranty, whether items were commissioned by Owner's commissioning agent; any testing performed or required on equipment, installer and install date, warranty expiration date, follow-up date prior to warranty expiration;

2.2.2.3.6.3.2. records/documentation produced; and

2.2.2.3.6.3.3. approval signatures by CMA and others as required.

2.2.2.3.6.4. CMA shall, in consultation with Master A/E develop templates for the establishment of short and long term commissioning, operations and maintenance plans in matrix form.

2.2.2.3.6.5. CMA shall develop Communication Protocol training plans or procedures for each of the Projects to ensure that all necessary training is given to appropriate personnel as required by TFC. The training requirements shall encompass organizational and procedural information as well as technical communication training of the selected EPMCS and drawing exchange protocols in accordance with BIM/AutoCAD standards (i.e., layers, blocks, BIM element libraries) through collaboration with the Project Team. The training performed shall be documented.

2.2.2.3.6.6. Other policies shall be developed and implemented as required by PIP.

2.2.2.3.7. During the development of each CDP, plan and coordinate the use of the Building Information Modeling Protocols incorporated herein by reference for all purposes as “Exhibit J,” and the Communication Protocol related to EPMCS to expedite, manage, and coordinate the transfer and exchange of technical data, construction cost estimating and scheduling information among service providers with a view toward early identification and resolution of design conflicts, inconsistencies, and interface issues, developing a comprehensive and effective budget for all costs, and developing a comprehensive master schedule for all Project activities. CMA shall assume responsibility to: (i) Cause the appropriate service providers to implement and manage the BIM systems for each Project within the Program; (ii) implement and manage EPMCS for the Program; and (iii) coordinate and facilitate transfer of the complete BIM model and/or “As-Built” Drawings in electronic format.

2.2.2.4. CMA shall perform the following.

2.2.2.4.1. In coordination with Master A/E, evaluate and make a joint recommendation for the use of certain sustainable principles and guidelines, and include a cost-benefit analysis of various sustainability and energy-efficiency measures for implementation by the Project Team. It is a Design Program requirement that all Projects be designed and constructed in accordance with the “green-building” requirements contained in the aforementioned joint recommendation as Approved.

2.2.2.4.2. Advise and assist Owner in its Approval of sustainability and energy-efficiency requirements for the applicable Construction Manager-at-Risk to implement so as to Cause all buildings and Sites planned for the Projects to be designed, constructed, and developed in accordance with each Approved sustainability and energy-efficiency requirement.

2.2.2.4.3. Assist TFC to formulate a pre-qualification and solicitation process to enable TFC to advertise through requests for qualifications, requests for proposals and/or requests for bids that will encourage competition among all service providers and promote the participation of small, minority and/or women-owned business enterprises, and underutilized and historically disadvantaged businesses in the Projects.

2.2.2.4.4. Make recommendations on any controlled insurance and/or subcontractor default insurance programs proposed by a construction manager.

2.2.2.4.5. Review, comment, compare, participate in interviews with, investigate and verify the qualifications of, and make recommendations to TFC concerning the selection or Approval of, service providers, and assist TFC and Owner's legal counsel with Owner's negotiation and Approval of contracts and procurements with certain service providers as required for execution of the Projects.

2.2.2.4.6. Review service provider submissions (at a minimum the service providers' proposed Quality Plan, safety plan, detailed work schedule/updates, constructability of proposed systems, means and methods, and GMP).

2.2.2.4.7. Develop a due diligence process to evaluate, compare and verify the ability and effectiveness of service provider candidates to execute services for the Projects based on their experience on similar work and the internal procedures of such candidates to measure, monitor, and minimize rework and delays as a result of design and/or construction errors, omissions or inefficiencies on the Projects.

2.2.2.4.8. Coordinate and facilitate a collaborative workshop of all Project Team members and consultants to develop the metrics of communication and shared platforms of information exchange.

2.2.2.4.9. Conduct regular reviews of the progress and services of all service providers, to verify that the schedule of deliverables meets the Project Schedule established in each PIP. Make visits to the sites of the Projects as necessary to maintain a thorough awareness of the status of the progress of the Projects.

2.2.2.4.10. Propose alternatives to TFC to refine and develop the division of responsibilities and the assignment of functions to accomplish completion of the Scope of Services as between CMA and the service providers with respect to the Projects, and incorporate such division of responsibilities into a corresponding responsibilities matrix to be submitted to Owner for review and coordination for development of the solicitations for the Services Providers, and further assist Owner to develop further divisions of responsibilities of service providers with respect to the Projects, all so as to avoid unnecessary or inappropriate duplication of effort, cost and expense as between the service providers and CMA.

2.2.2.4.11. Participate in work sessions with the service providers to recommend to Owner phasing and staging options for all construction activities for

each of the Projects to allow for the concurrent execution of each Project, including temporary facilities and anticipated building demolition, remodeling and repair prior to construction start, and during construction if “work-around” sessions are required, using each Construction Manager’s submittal of detailed schedules inclusive of Owner milestones. CMA will review all detailed schedule submittals from each service provider for viability and effectiveness. CMA shall Cause identified improvements in the plans to be implemented by the Project Team and service provider(s) prior to Owner’s issuance of a notice to proceed for design and/or for construction. CMA shall provide advice on constructability and staging, evaluate systems and material options, and review deliverables and milestone dates with the construction schedule, as required for execution of the Projects within the Program Budget.

2.2.2.4.12. Coordinate design and construction progress review meetings and ongoing budget and schedule control efforts, and provide accurate meeting documentation reflecting appropriately assigned action items and periodic progress reports to Owner, and assure that all issues of concern over the progress of the Projects are properly and timely resolved.

2.2.2.4.13. In coordination with Master A/E, recommend and implement procedures for identifying and managing the crediting to Owner’s account of any available volume discounts, trade discounts, rebates, refunds or other credits, including any tax credits or any energy rebates, available to any Project Team member arising out of the purchase of goods and materials for the Projects, the design or construction of the Projects, or the performance of services in connection therewith.

2.2.2.4.14. Take all necessary and appropriate actions to ensure that the service providers, as applicable, will be sufficiently involved in the design effort, and facilitate comprehensive, thorough constructability reviews of the design. CMA shall, prior to Owner’s acceptance of the submitted Construction Documents, be responsible for confirming that all questions and issues concerning compliance with a specific CDP raised through the design submittal review process have been resolved in a manner acceptable to Owner.

2.2.2.4.15. Review and comment on the reasonableness and completeness of the estimates prepared and submitted by the service providers at the Schematic Design Phase, Design Development Phase, and Construction Documents Phase for each Project.

2.2.2.4.16. Take appropriate action to assist Owner in reconciling the scope requirements for each Project to the Program Budget, and to otherwise assist Owner to:

2.2.2.4.16.1. maintain and compare, to the extent necessary and appropriate, initial and updated cost estimates;

2.2.2.4.16.2. identify, quantify and report to Owner all contingency costs included in any cost estimates;

2.2.2.4.16.3. evaluate any value engineering proposals offered by any of the service providers; and

2.2.2.4.16.4. cause the appropriate service provider for each respective Project to prepare final estimates at the conclusion of the Construction Documents Phase for the cost of construction in conjunction with the establishment of final pricing of construction contracts and subcontracts, identifying therein all contingency costs within the GMP to be reconciled with the Approved Program Budget.

2.2.2.4.17. Develop and maintain a cost control system acceptable to Owner for all of the Projects that will: (i) accurately record all commitments and expenditures (including those by Owner), including any estimated additional costs not contemplated in the Program Budget against each budget line item; (ii) establish a total estimated cost to complete each Project and further detailed cost estimates for any other buildings, structures or site elements affected within each Project; and (iii) identify actual versus budgeted cost reports in connection with each of the Projects.

2.2.2.4.18. Identify all permits and governmental inspections and approvals required for the Projects and Cause the appropriate service providers to timely obtain all such permits, and coordinate all required governmental inspections and approvals of their work sufficient to allow occupancy by Owner.

2.2.2.4.19. Oversee the planning for the service providers' site utilization and logistics, and provide coordination during the construction phase of each Project to allow for the concurrent execution of all Projects.

2.2.2.4.20. Monitor and comment on the effectiveness of construction administration services to be provided by the Architect/Engineers and other service providers for the Projects.

2.2.2.4.21. Conduct site visits as reasonably necessary to monitor and observe (and to verify with reasonable certainty that the service providers are accurately reporting) the progress of the performance of design and construction services by the service providers and to verify with reasonable certainty the applicable service providers fulfillment of their quality control programs, so that all work is being performed and executed according to PIP, CDPs, and contractual duties and obligations owed to Owner under the various contracts of members of the Project Team and other service providers. CMA shall coordinate with Master A/E for it to attend site visits, and advise and assist Owner to require Master A/E's attendance, to the extent reasonably necessary to determine compliance with CDP. The site visits conducted by Master A/E and CMA shall in no way relieve the Architect/Engineers of their full and complete responsibility for determining the quality and completeness of the work and services performed by the Construction Managers, consistent with and reasonably inferable from the Construction Documents.

2.2.2.4.22. Establish a protocol for the effective monitoring and prompt acceptance or rejection of the services or Work Product of any service provider if such services or Work Product will not produce a completed, functioning Project that conforms to the PIP, CDP, and the requirements of the contracts awarded or to be awarded in connection with the Projects. With respect to determining conformance to CDPs, CMA shall Cause Master A/E to promptly accept or reject the services or Work Product of any service provider.

2.2.2.4.23. Timely and correctly issue to the service providers all necessary and Approved clarifications and interpretations of the requirements of the contracts awarded for each Project, and recommend to TFC authorization of minor variations from such requirements when necessary and appropriate, to accomplish TFC's objectives without deviation from CDP, quality of Work Product, increase in the cost to TFC or material change to the schedule for completion of the Projects.

2.2.2.4.24. Cause Master A/E to conduct comprehensive drawing reviews of the deliverables of the Architect/Engineers to determine conformance and compatibility with CDP.

2.2.2.4.25. Cause the appropriate Project Team members and other service providers to evaluate and determine the suitability and acceptability of submittals and any substitute or "or-equal" materials and equipment proposed by service providers. CMA shall Cause Master A/E to review these aforementioned items as required, to make determinations of compliance with CDP.

2.2.2.4.26. For consideration by TFC, review, comment upon, and provide advice and recommendations to TFC on options for responses and solutions as required to take appropriate action on, all proposed or contemplated changes to the service providers' contracts, including contract modifications, Task Orders, change directives, notice regarding unforeseen conditions, change proposals, construction change directives, contract amendments, schedule changes or updates, claims and other information requested or information submitted by the service providers, and prepare a response of acceptance, rejection or other resolution in a form acceptable to TFC. CMA shall Cause Master A/E to review these aforementioned items as required, to make determinations of compliance with CDP.

2.2.2.4.27. Give final review of and recommend to Owner acceptance or rejection of payment applications and invoices in connection with the Projects, consistent with Owner's payment processing objective to strive to pay properly submitted invoices and to release payment for same after review and acceptance within a period of 15 days after receipt.

2.2.2.4.28. Conduct pre-construction meetings with the Project Team to establish and communicate all protocols described in this Agreement, including but not limited to the following: (i) Project documentation protocol; (ii) site and construction photo tracking protocol; and (iii) weekly site review reports and follow-up protocol. Prior to such

meetings, prepare and distribute a meeting agenda to each member of the Project Team, and distribute a meeting summary to the Project Team within three (3) business days after the meeting.

2.2.2.4.29. Develop a detailed phasing schedule with alternatives for accelerating completion of the Projects.

2.2.2.4.30. Maintain project documentation in EPMCS and in accordance with the Project documentation protocol. Each service provider, as applicable, shall pay for the costs for the user access seats to EPMCS of each member of their respective teams through CMA.

2.2.2.4.31. Review all requests for additional compensation submitted by the service providers, including all change orders, and assist Owner in negotiating the amounts to be paid, if any, pursuant to each such request.

2.2.2.4.32. Review, and coordinate with Master A/E for the effective review of all appropriate deliverables of the Service Providers, in consultation and collaboration with them, to evaluate compliance with CDP and to identify and resolve constructability issues at the conclusion of the Design Development Phase and the Construction Documents Phase, including but not limited to evaluation of the following: efficiencies in materials, space planning/use, functionality, and opportunities for increased operational efficiencies.

2.2.2.4.33. Identify opportunities for cost savings and implement ongoing cost control measures throughout the Design, Pre-Construction Phases and Construction Phases for all Projects.

2.2.2.4.34. Facilitate coordination between the service providers involved in each of the Projects, including cross coordination with Project Team members involved in different Program Phases or Projects.

2.2.2.4.35. Upon Owner's request, periodically update Owner on the progress of the Projects, the status of the Approved PIP, the status of each respective CDP, the Program Budget, and the Program Master Schedule.

2.2.2.4.36. Track and review all applications or requests for payment and all related invoices submitted by the service providers; with respect to such payment requests, verify impact on and alignment with the Approved Program Budget, and provide recommendations to Owner before processing such payment requests.

2.2.2.5. CMA shall perform the following Project closeout services.

2.2.2.5.1. Conduct Substantial Completion inspections and oversee Architect/Engineer's preparation of a consolidated "punch-list" of all items needed for Final Completion for each Project, inclusive of items identified by Owner, CMA and Master A/E.

Advise and recommend to Owner as to when Substantial Completion of a Project, or completion of significant Project components has been achieved in relation to the schedule milestones established therefor, and obtain all warranties, As-Built Drawings, and other deliverables necessary for the final completion and close-out of all Projects.

2.2.2.5.2. Monitor completion of “punch list items,” conduct a Final Completion inspection, and submit a report to Owner confirming Final Completion of the Project. CMA shall Cause Master A/E and/or the Architect/Engineer(s) to assist as necessary in ensuring “punch-list items” are completed in accordance with CDP and the Construction Documents, as applicable.

2.2.2.5.3. Require inspections or tests of the Work of service providers for the Projects, and receive, review and comment on all certificates of inspections, tests and approvals required by applicable Laws and Regulations or the applicable contracts for each Project.

2.2.2.5.4. Cause TFC’s commissioning agent to complete all commissioning activities and oversee TFC taking possession of completed Projects or completed portions thereof. Coordinate all commissioning activities, including submission of all commissioning reports, plans and other verification documents and establish and coordinate post-construction commissioning prior to expiration of warranties and guarantees.

2.2.2.5.5. Coordinate all required training of TFC property management, operations and maintenance personnel for care and maintenance of the new facilities in accordance with the Approved training plan.

2.2.2.5.6. Coordinate transfer of property operation to TFC, including coordination of all warranties and guarantees, and equipment, product and Project Manuals.

2.2.2.5.7. Establish and manage a warranty protocol throughout the warranty period to identify, enforce and resolve all warranty claims in consultation with Owner.

2.2.2.5.8. Coordinate and provide for appropriate access by all Project Team members to all project documentation, service provider submitted electronic As-Built Drawings, BIM models, and electronic Drawings prior to accepting those submittals, and facilitate and coordinate Owner’s acquisition of and/or transfer of ownership of such items to Owner.

2.2.2.5.9. Oversee each service provider’s preparation, timely submittal of, and the obtainment of approvals of documents from all utilities and any associated local, state, and federal agencies as required, including but not limited to the City of Austin, Travis County, the Texas Department of Transportation (“TxDOT”), and the Texas Commission on Environmental Quality (“TCEQ”).

2.2.2.5.10. Oversee Construction Managers' development and submission of all documentation required for Asbestos Free certification and American Lung Association certification.

2.2.3. Format of Deliverables. Each of CMA'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.

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

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

2.2.3.3. 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.

2.2.3.4. CMA shall Cause all documents, reports, Drawings and Specifications to be appropriately signed, sealed, and dated by the responsible architect(s) and engineer(s).

2.2.3.5. The Deliverables issued by CMA must comply with all Laws and Regulations.

2.2.3.6. No documents shall be issued, delivered, or released for any purpose without the prior written consent of TFC.

2.2.4. 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.

2.2.4.1. 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.

2.2.4.2. CMA is not authorized to commence providing any Professional Services to TFC or any Using Agency with respect to the Projects unless and until an appropriate Notice to Proceed is delivered by TFC.

2.2.4.3. TFC, including by and through the TFC Project Manager, reserves the right to extend any of the deadlines described above.

2.2.5. 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 Projects, and to require CMA to participate therein. However, such participation shall not relieve CMA of any of its obligations arising pursuant to this Agreement. No inspections of the Projects conducted by TFC or by CMA or the other service providers, either singularly or in the aggregate, shall reduce or enlarge the level or extent of CMA's or other service provider's responsibilities arising pursuant to this Agreement. Neither the Approval and/or final acceptance of a Project or any Deliverable, the payment of any Pay Application, nor the issuance of any certificates of Final or Substantial Completion by TFC shall constitute, or be deemed to be, a release of CMA's obligation to perform and timely deliver the Professional Services and any Additional Services in a manner consistent with the Standard of Care in accordance with this Agreement.

### III. TERM AND TERMINATION.

3.1. Duration. This Agreement shall be effective as of the Effective Date and shall terminate on August 1, 2021, unless extended by the parties by amendment to this Agreement or terminated earlier, as provided below.

3.2. Suspension, Default, and Termination by Owner.

3.2.1. Suspension by Owner for Convenience. Owner may at any time order CMA 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 Agreement and any one or more tasks, in whole or in part, by giving written notice to CMA. Upon receipt of Owner's order or notice, CMA shall immediately discontinue services as directed therein, except as expressly directed otherwise therein. CMA shall thereafter do only such services and work as may be necessary to preserve and protect work already completed. In case of such termination, CMA shall be entitled to payment only for services and work performed in accordance with the requirements of this Agreement 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 CMA in the event of such termination by Owner. In no event shall CMA 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 Agreement for cause upon CMA's breach or default.

3.2.3. Termination by Owner for Cause.

3.2.3.1. Owner may terminate the Agreement if CMA, 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 to meet the requirements of this Agreement, PMP, and PIP;

3.2.3.1.2. fails to make payment to CMA Personnel for services in accordance with the respective agreements between CMA and CMA 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 CMA'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 CMA and:

3.2.3.2.1. take possession of all Work Product in the possession of CMA;

3.2.3.2.2. accept assignment of subcontracts pursuant to this Agreement; and

3.2.3.2.3. 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 CMA is in default, or likely to default, in the performance of its obligations under this Agreement, Owner may request in writing, and CMA shall provide to Owner in writing within ten (10) days after receipt of Owner's request, adequate assurance of CMA's present and future ability to perform its obligations, failing in which CMA shall be deemed to be in material default of this Agreement. CMA's written response to such request shall include evidence sufficient to demonstrate CMA's ability to perform to the reasonable satisfaction of Owner. Owner's determination that CMA has failed to provide evidence sufficient and satisfactory to constitute adequate assurance of its ability to perform hereunder shall not be subject to challenge except for reasonableness if CMA 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, provided that Owner's termination is not finally determined to have been unreasonable.

3.2.3.4. If, in the event of a termination for cause, the unpaid balance of all compensation remaining to be earned by CMA under this Agreement exceeds the sum of the cost of finishing the Services, such excess shall be paid to CMA. If such costs and damages exceed such unpaid balance, CMA shall be liable to pay the difference to Owner, which amount shall be due and owing to Owner within ten (10) calendar days after delivery of Owner's demand for payment thereof. This obligation for payment shall survive termination of this Agreement.

3.2.3.5. Upon determination by Court of competent jurisdiction that termination of CMA 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 CMA'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. Replacement of CMA by Owner. In the event of any termination of this Agreement by Owner, in whole or in part, CMA consents to Owner's selection of another to serve as CMA of Owner's choice to assist Owner in completing the Project. Upon termination for any reason whatsoever, however, CMA shall promptly deliver to Owner all information, including all electronic documents, in CMA's possession relating to the Program and the Project. CMA further agrees to cooperate and provide any further information requested by Owner in connection with and reasonably necessary for the completion of CMA's obligations with respect to the Program and the Project.

3.2.5. Default and Unsatisfactory Work by CMA. 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 CMA when CMA 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 CMA is in default, including the right to: terminate this Agreement; bring legal action for damages; or 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 CMA's Services, if the same was not actually discovered by Owner in sufficient time to report the same to CMA prior to expiration of the Contract Term or prior to TFC's termination of this Agreement for any reason.

### 3.3. Suspension, Default and Termination by CMA.

#### 3.3.1. Termination by CMA.

3.3.1.1. CMA may terminate the Agreement in accordance with 3.3.1.2, below, if CMA's performance of Services is suspended for a period of 90 consecutive days through no act or fault of CMA or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with CMA, for any of the following reasons:

3.3.1.1.1. issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

3.3.1.1.2. an act of government, such as a declaration of national emergency that requires all Work to be stopped; or

3.3.1.1.3. TFC fails to make payments to CMA as required by this Agreement.

3.3.1.2. CMA may terminate the Agreement if, through no act or fault of CMA or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with CMA, due to repeated suspensions, delays or interruptions of the entire Work by Owner as described in Section 3.3.1.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

3.3.1.3. If one of the reasons described in Section 3.3.1.1 or 3.3.1.2 exists, CMA may, upon seven (7) days' written notice to Owner, terminate the Agreement and recover from Owner payment for Services performed up to the date of suspension, including reasonable overhead and profit, and costs incurred after the date of suspension by reason of such termination.

3.3.1.4. If the Work is stopped for a period of 90 consecutive days through no act or fault of CMA or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with CMA because Owner has repeatedly failed to fulfill Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, CMA may, upon seven additional days' written notice to Owner terminate the Agreement and recover from Owner as provided in Section 3.3.1.3.

### 3.3.2. Suspension by CMA.

3.3.2.1. If Owner fails to make payment under the Agreement, through no fault of CMA, within seven days after the date established in the Contract Documents the amount, then CMA may, upon seven additional days' written notice to Owner, stop the Work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of CMA's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. In addition to the foregoing, if CMA at any time has reasonable grounds to believe that Owner is in default, or likely to default, in the performance of its obligations under this Agreement, CMA may request in writing, and Owner shall provide to CMA in writing within ten (10) days after receipt of CMA's request, adequate assurance of Owner's present and future ability to perform its obligations, failing in which Owner shall be deemed to be in material default of this Agreement. Owner's written response to such request shall include evidence sufficient to demonstrate Owner's ability to perform to the reasonable satisfaction of CMA.

#### **IV. CONSIDERATION; PAYMENT CONDITIONS.**

##### **4.1. Contract Limit – Fees and Expenses.**

4.1.1. Program Definition Phase Fee. In exchange for the timely delivery of the Professional Services during the Program Definition Phase, CMA shall be paid a fee, inclusive of all reimbursable expenses, in an amount not to exceed Eight Hundred Eleven Thousand Eight Hundred Ninety Seven and No/100 Dollars (\$811,897.00), payable in accordance with CMA's Initial Fee Schedule and Staffing Plan, Exhibit F, and based upon the months of service actually expended by CMA to properly complete the Services required during the Program Definition Phase, which Services include development and submission of PMP and the project-specific PIPs.

##### **4.1.2. Maximum Fee Proposal for Conceptual Design, Design, Construction and Post-Occupancy Phases.**

4.1.2.1. After TFC's Approval of PMP and the completion of the Program Definition Phase, CMA shall within 14 days thereafter promptly submit a maximum fee proposal (hereinafter referred to as the "Lump Sum maximum Fee Proposal") to TFC in the form required by "Exhibit K" (Form of CMA's Lump Sum maximum Fee Proposal for the Conceptual Design, Design, Construction and Post Occupancy Phases) for all fees necessary and appropriate to properly perform the Services required during the Conceptual Design, Design, Construction and Post Occupancy Phases of the Projects (hereinafter referred to in Section 4.1.2. as the "Applicable Phases"), inclusive of all reimbursable expenses. Simultaneous with such submission, CMA shall submit the basis upon which the Lump Sum Maximum Fee Proposal was formulated, including its proposed staffing plan for each phase of each Project, as determined in accordance with the Approved PMP and PIPs. By submission of the Maximum Fee Proposal, CMA represents, warrants, covenants, and agrees that: (i) it has reviewed thoroughly all documents and data described in and relevant to the Services described therein; (ii) fully investigated and examined and otherwise carefully and thoroughly familiarized itself with the conditions and constraints under which such Services will be performed; and (iii) that it has determined, after such review: (a) that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the Services described therein, except as set forth in the clarifications and assumptions set forth in the Lump Sum Maximum Fee Proposal; (b) that the Program Master Schedule allows a reasonable period of time for completion of the Services and the Work; and (c) that CMA has considered all risks and occurrences that could affect the cost or timely completion of the Services for which it is responsible under this Agreement.

4.1.2.2. Acceptance Process for Lump Sum Maximum Fee Proposal. If TFC accepts the Lump Sum Maximum Fee Proposal, both parties shall sign a Contract Amendment establishing CMA's staffing plan and the Lump Sum Maximum fees to be paid to CMA during the Applicable Phases of the Projects. CMA acknowledges and understands that TFC has no obligation under this Agreement to agree to any proposal submitted by CMA, and that TFC, at its sole option and discretion, may reject any proposal and terminate this Agreement for convenience in accordance with Section 3.2.2, or attempt to negotiate it with CMA (with the right to cease negotiations and reject it at any time). CMA shall not withdraw its Lump Sum Maximum Fee Proposal, which shall be irrevocable and open to acceptance by Owner for a period of ninety (90)

days after Owner's receipt thereof. Upon acceptance of the Lump Sum Fee Maximum Proposal through execution of a Contract Amendment, CMA assumes the risk of any costs incurred by CMA in excess of such accepted Lump Sum Maximum fee.

4.1.3. Submission of Pay Applications or Invoices. No more frequently than once per month, CMA 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 CMA in accordance with Chapter 2251 of the Texas Government Code, also known as the "Prompt Payment Act." CMA will not be compensated for any Professional Services performed or delivered by CMA prior to the Effective Date of this Agreement or after its termination.

4.2. Proportional Payments. Payments shall be made to CMA monthly in proportion to the Services properly performed in accordance with CMA's Initial Fee Schedule, Exhibit F.

4.3. Reimbursable Expenses for Additional Services. Reasonable lodging and traveling expenses for Additional Services shall be considered additional Reimbursable Expense under this Agreement when professional and technical personnel of CMA are away from the cities in which they are permanently assigned and are conducting authorized business directly connected with Additional Services under 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 CMA, except for overnight stays, which require the TFC Project Manager's prior 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://fm.x.cpa.state.tx.us/fmx/travel/texttravel/index.php>, formerly known as the State of Texas Travel Allowance Guide for state employees. No Reimbursable Expenses shall exceed the amount Approved in advance for such expenses. 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, CMA must obtain the written Approval 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 contract amount(s), CMA shall deliver written notice thereof to TFC. Nothing herein shall be construed to require TFC to increase the approved contract amount(s) established pursuant to this Agreement.

4.5. Additional Services. Upon request by TFC for Additional Services, CMA 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 CMA 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 CMA 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 CMA Personnel, CMA shall submit to Owner the qualifications, experience and performance evaluations of all such CMA Personnel who are the subject of a requested adjustment. CMA 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 CMA 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 CMA shall share the cost of any such study. Owner shall be entitled to reduce any adjustment requested by CMA 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. CMA may, as hereinafter provided, claim an equitable adjustment to its Fees and/or the Program Master Schedule for extended performance that CMA demonstrates to have been caused by Owner's act of intentional interference with CMA'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 CMA's performance of the Services: (i) which causes CMA'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 CMA 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, CMA may claim, and Owner's liability shall be limited to, an equitable adjustment to its Fees for CMA's reasonable additional costs of impacts or extended performance during the period of CMA'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 Required. In any such event, CMA shall deliver the written notice required above within seventy-two (72) hours of the commencement of an Owner's act of intentional interference, CMA's failure of which shall constitute, without further notice or action, a waiver of CMA's right to claim an adjustment of its fees for such act of intentional interference.

4.6.2. Delays to the Program or Projects. In no event shall CMA's Fees be equitably adjusted for delays to the Program or Projects to the extent caused by CMA by failing to perform its Services required hereunder in accordance with its Standard of Care.

4.7. Payments to Subcontractors. For all services rendered, CMA'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 CMA and Subcontractors.

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

4.9. Right to Withhold Payment. Notwithstanding anything in this Agreement to the contrary, TFC shall not be obligated to make, and may withhold interest free, any payment to CMA under this Agreement if any one or more of the following three (3) conditions exist:

4.9.1. CMA Default. CMA is in default of any of its obligations under this Agreement, 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;

4.9.2. CMA Non-Performance. CMA seeks payment for Services that were not performed under and in accordance with this Agreement, in which case the amount of such payment may be withheld without notice; or

4.9.3. CMA Failure to Promptly Pay Personnel, Third Parties. CMA has failed to make promptly when due any payment to any CMA Personnel or other third party used by CMA to perform this Agreement, and for which TFC has paid CMA, 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 CMA, CMA 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 CMA for compensation for its Services.

4.11. Claim, Obligation, or Lien. Should there be any claim, obligation or lien asserted before or after final payment is made that arises from CMA's Services, CMA 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 CMA in accordance with the terms of this Agreement.

4.12. Damage to the Projects, Failure to Perform, or Default. Should CMA 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 CMA. TFC shall provide CMA a copy of, or reasonable access to, documents in the possession of TFC related to the Sites, including the Project Analysis, or the equivalent thereof, and the Master Plan. Provided, however, CMA shall not be entitled to rely on the accuracy or completeness of any such documents.

5.1.2. TFC Obligations to CMA. TFC shall:

5.1.2.1. upon CMA's receipt of general and criminal background check clearance, assist CMA in obtaining such access to the Sites as is reasonably necessary to enable CMA to provide the Professional Services;

5.1.2.2. designate the TFC Project Manager; and

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

5.1.3. Reliance upon CMA. 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 CMA to advise and assist TFC to determine the adequacy, accuracy and completeness of all Services and Deliverables, rendered for the Project, CMA shall also be responsible for determining the adequacy, accuracy and completeness of any information furnished to CMA by or on behalf of TFC and used by CMA in rendering its Services.

5.2. Acknowledgements, Covenants, and Agreements of CMA. CMA acknowledges, covenants, and agrees as follows.

5.2.1. Timely Delivery of Conforming Services. CMA will, subject to Force Majeure events, as defined in Section 11.13 below, timely provide the Professional Services in conformity with, and as specified in, this Agreement.

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

5.2.3. Limitation of Authority. CMA agrees that the TFC Project Manager 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 Exhibit H, the Professional Services Schedule, pursuant to Section 2.2 above. Any deviation from a deadline must be Approved by the TFC Project Manager in writing issued prior to the expiration of any such deadline.

5.2.4. CMA Safety. In the rendering of the Services, CMA shall, and shall Cause all CMA Personnel to abide by all OSHA rules and regulations provided by the Department of Labor, OSHA, Code of Federal Regulations, Chapter 29. Employees of CMA and Subcontractors shall be trained in accordance with Chapter 29, Occupational Safety and Health Regulations. CMA and Subcontractors shall inform the TFC Project Manager of their Hazardous Electrical Energy Control, Lockout/Tag-out Procedure. CMA's procedure must meet or exceed TFC's procedure as determined by the TFC Project Manager. Work or Services shall not be done on energized electrical circuits, components or equipment. When de-energizing is impractical due to possible harm to personnel, equipment or facility damage, negative onsite or offsite environmental impact, or business interruption, CMA must follow OSHA requirements as detailed in OSHA Regulations 1910.331 – 1910.399.

5.2.4.1. TFC, in its sole discretion, may at any time order in writing a temporary stand-down of CMA's performance of the Services ("Safety Stand-Down Order") as a result of any one or more Safety Incidents, whereupon CMA shall immediately direct all CMA Personnel to stop all Services while CMA conducts a comprehensive review of CMA'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 CMA 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 CMA determines to be necessary and appropriate to fulfill its obligations in accordance with this Agreement. Upon receipt of TFC's Safety Stand-Down Order, CMA 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 CMA 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, CMA shall, in the exercise of CMA's reasonable judgment, propose the date by which CMA will complete all corrective action. Services shall resume only upon TFC's delivery of further written notice to CMA withdrawing TFC's Safety Stand-Down Order, which notice of withdrawal shall not be issued until TFC is reasonably satisfied that CMA has sufficiently implemented all appropriate corrective action as necessary to enable CMA to safely resume Services, fulfill its contractual obligations set forth in this Agreement, and thereby avoid recurrence of the Safety Incident(s). CMA shall not be entitled to an adjustment of CMA's Compensation, or the Professional Services Schedule, as the result of TFC's issuance of a Safety Stand-Down Order. If CMA fails to implement the corrective action in the manner proposed by CMA 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, CMA'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 CMA Personnel, or to provide guidance or instruction as to CMA'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 CMA 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 Projects without causing injury or harm to persons or property.

5.2.5. Cooperation. All project managers, employees, and associated Subcontractors of CMA shall mutually cooperate with and assist each other and all other members of the Project Team retained by TFC.

5.2.6. Mutual Cooperation.

5.2.6.1. CMA agrees to conduct all of its Services under this Agreement by and through appropriate communications with the TFC Project Manager.

5.2.6.2. TFC agrees to conduct all of its required actions under this Agreement by and through appropriate communications with CMA.

5.2.6.3. CMA agrees to employ competent personnel meeting the requirements set forth herein, who shall be satisfactory to TFC. Key Personnel assigned to perform Services and identified on Exhibit E may not be reassigned without the prior written approval by the TFC Project Manager. TFC may request that CMA replace unsatisfactory Personnel, which request shall not be unreasonably denied.

5.2.6.4. CMA 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, CMA shall report the concern to the TFC Project Manager.

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

5.2.7. E-Verify. (i) By entering into this Agreement, CMA 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: (a) all persons employed to perform duties within the State of Texas, during the term of the Agreement; and (b) all persons (including subcontractors) assigned by CMA to perform work or Services pursuant to the Agreement, within the United States of America. (ii) CMA 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 CMA, and CMA'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. CMA shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Agreement. (iii) For persons not eligible for E-Verify screening, CMA (including Subcontractors) 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. CMA Project Manager identified in the Initial List of CMA Project Manager and Subcontractors (hereinafter referred to as the "List"), a digital copy of which is incorporated herein by reference for all purposes in PDF on the Exhibits CD and labeled therein as "Exhibit L," will supervise the efforts of CMA to timely provide TFC with the Services.

5.2.8.1. CMA Project Manager must be committed to the Project on a full-time basis. TFC reserves the right to Approve the appointment of CMA Project Manager and to demand that CMA Project Manager, and any of CMA's employees or Subcontractors, be removed and replaced if, in the sole opinion of TFC, their performance on the Projects is and/or was not adequate or their continued involvement with the Projects will, is, or has become, detrimental to the timely and successful completion of the Projects, 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. CMA Project Manager and Subcontractors identified in the List shall not be removed or replaced by CMA, nor shall any other Subcontractors be engaged by CMA, unless prior written consent is obtained from TFC, which consent shall not be unreasonably withheld, conditioned, or delayed.

5.2.9. Buy Texas. If CMA is authorized to make purchases under this Agreement, CMA certifies that CMA 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.

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. CMA does not control or guarantee the performance of any service provider not under the supervision or control of CMA; provided however, CMA shall promptly notify TFC of any observation of a service provider's failure to perform their duties and responsibilities in accordance with applicable Laws and Regulations, and shall recommend to TFC appropriate alternative measure(s) to correct such failures. CMA will not be required to provide professional services that constitute the practice of architecture or engineering. CMA will not be required to provide professional services in violation of applicable law. CMA will be responsible to advise and assist Owner to determine, but shall not be responsible as a design professional for

the adequacy of the performance and design criteria specified in the Contract Documents.

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.

5.2.13. General and Criminal Background Check.

5.2.13.1. CMA represents and warrants that neither CMA nor any of CMA's employees assigned to perform the Services, have been convicted of a felony criminal offense, or of a crime involving moral turpitude, or that, if such a conviction has occurred, CMA has fully advised TFC in writing as to the facts and circumstances surrounding the conviction(s).

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

5.2.13.2.1. All criminal background check forms for all of CMA employees and Subcontractors that will initially commence any work or Services on-site must be fully completed and submitted to TFC within fifteen (15) days of the date of the notice of award, and the process thereafter must be diligently pursued by CMA.

5.2.13.2.2. The process must be satisfactorily completed for every employee and Subcontractor before they perform services at the Site.

5.2.13.2.3. All criminal background checks must be accomplished by the Texas Department of Public Safety ("DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of CMA's employees and/or Subcontractors, DPS or TFC, will adjudicate the results of the criminal background searches in accordance with the criteria set forth in the Criminal Background Checks and Application Guidelines, a digital copy of which is incorporated herein by reference for all purposes in PDF on the Exhibits CD, and named therein as "Exhibit M." CMA's or Subcontractor's failure to timely secure criminal background check clearance shall not be considered a legitimate delay in the Professional Services Schedule.

5.2.14. Equal Opportunity. CMA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. CMA shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CMA shall post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination subsection. CMA shall include the above

provisions in all Subcontracts pertaining to the Professional Services.

5.2.15. No Advertising. CMA 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. CMA 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 CMA's prosecution of the Services or work were prepared solely for the benefit of TFC, and that CMA shall have no right to rely upon such and that any reliance thereon shall be at CMA'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, or, with Owner's Approval, at CMA's site offices. If CMA's offices or the offices of any CMA 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 CMA.

6.1. Warranties and Representations by CMA. CMA 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. CMA 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 CMA to provide the Services required by this Agreement. CMA will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. CMA agrees to Cause its Subcontractors to pay any such government obligations arising out of their performance of Services under this Agreement and not paid by them. As part of its delivery of the Professional Services, CMA 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. CMA shall not place any employee of CMA at a worksite, nor shall CMA 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. CMA warrants that CMA: (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 CMA'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. CMA further acknowledges, agrees, and warrants that CMA: (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 CMA'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, CMA 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 CMA or any of its employees.

6.1.2.3. CMA 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. CMA shall execute and deliver to TFC such documents as may be required to effect or evidence compliance.

6.1.2.4. Subject to the limitations in Section 5.2.11, CMA further warrants and represents that in carrying out its duties and responsibilities under this Agreement, it will neither undertake nor cause, nor knowingly 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. CMA shall protect and indemnify TFC and TFC's officers and agents, unless the officers or agents are knowingly complicit in the commission of the violation, against any claim or liability arising from or based on any violation of the same.

6.1.2.5. CMA 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. CMA is proficient in the use of CAD systems, BIM systems, and EPMCS utilized by TFC.

6.1.4. Standard of Care. CMA shall, in the performance of the Services, comply with the standard of care described herein. Owner and CMA agree and acknowledge that Owner has entered into this Agreement in reliance on CMA's construction and design management abilities to perform its obligations hereunder. CMA accepts that, by this Agreement, a relationship of trust and confidence is hereby established between it and Owner. CMA understands the complexity involved in this type of construction and the necessity of coordination of the performance of its Services with the Project Team. CMA will perform, or Cause to be performed, all Services expeditiously, and in no event later than is required to conform, as applicable, to the Program Master Schedule, Professional Services Schedule, and the Project Schedule, and shall do so with that degree of professional skill and care practiced by similar firms, using similar collaborative project planning and management methods, and having industry leading knowledge and skill for the planning and management of construction projects of comparable complexity and value as described in the Request for Qualifications. CMA will furnish efficient business administration and superintendence and perform the Services in such manner as to provide Owner the best value. CMA shall employ and exercise the professional judgment of its experienced and qualified construction professionals, and it is the intention of the parties that CMA 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 Projects. CMA shall, at all times, exercise exclusive direction and control, and shall be responsible for proper supervision of all its CMA Personnel, Subcontractors, and subconsultants while present on the Worksites and otherwise. The standard of care required hereunder shall not, however, be deemed to alter or expand CMA'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 covered by that indemnity, for which the standard of care hereunder shall be deemed and construed to be no greater than that imposed upon CMA by common law.

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; (iii) be fit for ordinary use, of good quality, and with no material defects; and (iv) comply with all applicable Laws and Regulations. CMA has carefully reviewed the Professional Services Schedule included in Exhibit H and CMA 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. No Material Change in Qualifications or Responses to Request for Qualifications. CMA represents that all information contained in CMA's responses to TFC's Request for Qualifications, RFQ 303-6-01255, dated March 25, 2016, including but not limited to CMA'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 CMA's responses to be untrue or materially different than what was originally stated.

6.1.7. Financial Ability and Insurance. CMA 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. CMA's insurance policies are and will be maintained in the form required under TFC's Requirements of Insurance incorporated herein by reference for all purposes as "Exhibit N."

6.1.8. General and Professional Licensing. CMA represents that CMA, including CMA 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.

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

6.1.10. Royalties and Licenses to Use Intellectual Property. CMA represents that it will pay all royalties and license fees for intellectual property used by CMA to create or develop its own Work Product that are or become due in connection with the Services. CMA warrants that neither the Services nor use of CMA's Work Product will infringe any patent or other proprietary right. Should CMA, in consultation with TFC, determine that CMA'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 CMA'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.

6.1.11. Warranty of Services. CMA represents the Services rendered hereunder shall be performed in accordance with CMA's Standard of Care, all Laws and Regulations, and the requirements of this Agreement. It is understood that during the initial 120 day period from date of NTP, a Warranty Services based Maximum fee will be developed by CMA with approval of Owner's project manager. Additionally, Exhibit G hourly rates will apply during the 2 year warranty period should a Warranty Fee schedule not be agreed upon.

6.1.12. Additional Warranties. In performing its Professional Services for the Projects, CMA shall be bound by, and comply with, any warranties, representations, and/or promises of additional services included in CMA's Response to the Request for Qualifications, dated April 27,

2016, a digital copy of which is incorporated herein by reference in PDF on the Exhibits CD and named therein as “Exhibit O,” but only to the extent any such warranties, representations, and/or promises of additional services are made therein.

6.1.13. Eligibility. CMA 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).

6.1.14. Family Code Disclosure of Ownership. Pursuant to the requirements of the Texas Family Code, Section 231.006, regarding delinquent child support, the individual or business entity named in this Agreement is not ineligible to receive payment under this Agreement and, if applicable, CMA 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. CMA acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

6.1.15. Deceptive Trade Practices Act; Unfair Business Practices Disclosures. CMA 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. CMA 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 CMA or any of CMA’s officers have occurred or are currently pending in an administrative proceeding or in a lawsuit filed with any court, then CMA 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.

6.1.16. Disclosure of Former State Executives. Pursuant to Texas Government Code, Section 669.003 relating to contracting with an executive of a state agency, no Person who, in the past four (4) years served as an executive of TFC or any other state agency was involved with or has any interest in this Agreement or any Contract resulting from this Agreement. If CMA employs or has used the services of a former executive head of TFC or any other state agency, then CMA 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 CMA, and the date of employment with CMA.

6.1.17. Financial Interest/Gifts. (i) Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, CMA has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement. (ii) Pursuant to Texas Government Code Chapter 573 and Section 2254.032, if

applicable, CMA certifies that CMA 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 CMA's company or corporation. CMA 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 CMA will be dealing on behalf of TFC.

6.1.18. Prior Employment. CMA 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 CMA's firm or corporation. CMA 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 CMA will be dealing on behalf of TFC pursuant to the Texas Government Code, Chapter 573 and Section 2254.032. Furthermore, CMA certifies and agrees that if it employs any former employee of TFC, such employee will perform no work in connection with this Agreement during the twelve (12) month period immediately following the employee's last date of employment at TFC.

6.1.19. Affirmation as to Submittals. Upon submittal to TFC of any documentation or data that was created or modified by CMA, including but not limited to Drawings, Specifications, and the Program Budget, all representations by CMA contained therein shall be true and accurate as to each such creation or modification.

6.1.20. Warranty Limitation. All of the warranties contained in this Article 6 are subject to the provisions of Section 5.2.11. The warranties in this Article 6 do not affect the provisions of Section 5.2.11 that state CMA does not control or guarantee the performance of any service provider not under the direct supervision or control of CMA.

## **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 CMA, for the fiscal year budget in existence at the time of the breach.

## **VIII. COPYRIGHTS AND TRADEMARKS.**

8.1. Copyrights. CMA 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. If the Deliverables produced by CMA are subject to copyright protection, CMA hereby grants to TFC a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such and to authorize others to do so. CMA 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 CMA pursuant to this Agreement shall be considered instruments of its services in respect to the Project. It is understood that CMA does not represent such Deliverables to be suitable for reuse on any other study or for any other purpose(s). If CMA, at TFC's request and authorization, verifies or adapts CMA's Deliverables for TFC's use on another study, CMA shall be compensated for redesign or new design, bidding, and construction administration services.

8.1.2. Delivery to TFC. CMA 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. CMA 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. CMA 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. CMA 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 CMA 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, the SAO may conduct an audit

or investigation of any entity receiving funds under this Agreement, including direct payments to CMA 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 Agreement 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 Agreement, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation which may ensue. TFC recognizes CMA's practice is to not maintain emails older than three (3) years. CMA may comply with this requirement by preserving separate electronic media back up of all electronic data, including emails, related to this Agreement or the Projects, and storing such backup copies for the required period.

9.4. Confidentiality Provisions Applicable to CMA.

9.4.1. Protection of Confidential Information. CMA 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 CMA; 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 CMA 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 CMA to be confidential and proprietary to TFC; or (iv) not generally known by CMA. 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 CMA 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, 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; and

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 CMA in breach of the terms of this Agreement; (ii) becomes available to CMA from a source (other than TFC) which source is not, to the best of CMA's knowledge, subject to any legally binding obligation to keep the same confidential; or (iii) has been independently acquired or developed by CMA.

9.4.3. Covenants. As a consequence of CMA's acquisition or anticipated acquisition of Confidential Information, CMA 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, CMA 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, CMA 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 CMA will take all reasonable precautions to prevent inadvertent disclosure of such Confidential Information. This prohibition against CMA'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 CMA understands that such similarity does not excuse CMA 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, CMA 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 CMA'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. CMA 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. CMA 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 CMA 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, CMA 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 CMA; (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 CMA 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 CMA; 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, CMA understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552. If contacted by TFC, CMA will cooperate with TFC in the production of documents responsive to the request. CMA agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. CMA 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, CMA 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. CMA 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, CMA 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 with the State of Texas, by and through TFC, must comply with the insurance requirements established hereunder and in accordance with Texas Government Code Chapter 2269.208 before CMA 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 TFC's Requirements of Insurance, Exhibit N.

10.3.11. 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 CMA Personnel or any other entity which has assumed any of CMA'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. CMA shall be solely responsible for all contractual obligations to CMA Personnel, and shall pay for the Services and Work of its CMA Personnel in accordance with Laws and Regulations. CMA 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 CMA 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.

10.3.12. Required Insurance Coverages No Effect On Indemnifications. The insurance and insurance limits required herein shall not be deemed as a limitation on CMA's liability under the indemnifications granted to TFC.

10.3.13. No Warranty That Insurance Limits Will Be Adequate to Fully Protect CMA. 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 CMA.

## XI. MISCELLANEOUS PROVISIONS.

11.1. INDEMNIFICATION. CMA SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMERS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM NEGLIGENT ACTS OR OMISSIONS OF CMA OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY CMA WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CMA MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CMA AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

11.1.1. INFRINGEMENTS. CMA 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 THE PERFORMANCES OR ACTIONS OF CMA PURSUANT TO THIS AGREEMENT. CMA AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CMA SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CMA WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CMA MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CMA 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 CMA'S WRITTEN APPROVAL; (iii) ANY MODIFICATIONS MADE TO THE PRODUCT BY CMA 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 CMA BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES CMA WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CMA MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT CMA'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-INFRINGEMENT.**

**11.1.2. TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY. CMA AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, CMA SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CMA'S AND ITS PORTION OF CMA'S EMPLOYEES' TAXES OF WHATEVER KIND FOR WHICH IT IS RESPONSIBLE, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. CMA AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO THE EMPLOYMENT OF ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE SHALL NOT BE LIABLE TO CMA, 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. CMA 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. CMA SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CMA WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CMA MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CMA AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

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

11.1.4. Settlement Authority. No settlement of any such claim shall be made by CMA without TFC's prior written Approval.

11.2. Copyright Infringement. CMA shall, at its own expense, defend, or at its option settle, any suit or proceeding brought against TFC based on an allegation that the practice or use by TFC of any of CMA's Work Product, including Drawings, Specifications, Documents and engineering criteria such as methods, processes, techniques or procedures given to TFC in connection with CMA's performance of this Agreement, constitutes an infringement of any United States patent, trade secret, or copyright, if CMA is notified promptly in writing and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. CMA will pay any fines, penalties, and fees imposed as a result of said infringement and any damages and costs awarded in any suit or proceeding so defended. In case the process, as a result of any suit or proceeding so defended, is held to constitute infringement or its use by TFC is enjoined, CMA will, at its option and its own expense, either: (a) procure for TFC the right to continue using said process, (b) replace it with a substantially equivalent non-infringing process, or (c) modify the process so it becomes non-infringing.

11.3. 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 CMA's obligations with TFC. If CMA subcontracts with others for some or all of the services to be performed under this Agreement, CMA shall comply with all HUB requirements pursuant to Chapter 2161 of the Texas Government Code. When required, CMA shall submit an updated HUB Subcontracting Plan, 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 P." CMA 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 HUB Subcontracting Plan PAR, 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 Q."

11.4. Relationship of the Parties. CMA 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, CMA is and shall be an independent contractor. Subject only to the terms of this Agreement, CMA shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. CMA agrees that TFC shall be entitled to have confidence in and rely upon CMA to undertake the rendering of Services in accordance with this Agreement 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 CMA or any other party. CMA 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.

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

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

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

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  
   1711 San Jacinto Boulevard, Suite 400  
   Austin, Texas 78701  
   Email: [kay.molina@tfc.state.tx.us](mailto:kay.molina@tfc.state.tx.us)

With a copy to: Texas Facilities Commission  
Attention: John S. Raff, Deputy Executive Director  
1711 San Jacinto Boulevard, Suite 400  
Austin, Texas 78701  
Email: [john.raff@tfc.state.tx.us](mailto:john.raff@tfc.state.tx.us)

If to CMA: Balfour Beatty Construction, LLC  
Attn: John Tarpey, President, Texas Division  
3100 McKinnon, Seventh Floor  
Dallas, Texas 75201  
Email: [jtapey@balfourbeattyus.com](mailto:jtapey@balfourbeattyus.com)

With a copy to: Balfour Beatty Construction, LLC  
Attn: Jeffrey A. Brannen, SVP, Chief Legal Officer, Texas Division  
3100 McKinnon, Seventh Floor  
Dallas, Texas 75201  
Email: [jbrannen@balfourbeattyus.com](mailto:jbrannen@balfourbeattyus.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.

11.9. Name and Organizational Changes. CMA must provide TFC with written notification of all name changes and organizational changes relating to CMA including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change. CMA, 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 Agreement. If the change entails personnel changes for personnel performing the responsibilities of the Agreement for CMA, CMA 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 Agreement and CMA 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 CMA or successor entity, as applicable, to maintain its status as a party to this Agreement. TFC may terminate the Agreement due to any change to CMA that materially alters CMA's ability to perform under the Agreement.

11.10. Electronic and Information Resources Accessibility Standards. (i) 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. (ii) If applicable, CMA 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/>.

11.11. 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. CMA 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.

11.12. 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. CMA acknowledges that this Agreement is effective only for the period of time specified in the Agreement.

11.13. 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. 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. If possible, the notice shall set forth the extent and duration thereof. 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 CMA’s services under this Agreement require a written amendment to this Agreement.

11.14. 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 CMA in a court of law having

jurisdiction over the claim to be summarily dismissed. Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code 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, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code, Section 114.002 shall be governed by the following dispute resolution process:

11.14.1. Claims for Breach of Contract and Counterclaims.

11.14.1.1. CMA may make a claim against TFC for breach of a contract between TFC and CMA. TFC may assert a counterclaim against CMA.

11.14.1.2. CMA 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.

11.14.1.3. The notice must state with particularity: (i) the nature of the alleged breach; (ii) the amount CMA seeks as damages; and (iii) the legal theory of recovery.

11.14.1.4. TFC must assert, in a writing delivered to CMA, any counterclaim not later than the sixtieth (60th) day after the date of notice of a claim under Section 11.14.1.2 above.

11.14.1.5. Damages.

11.14.1.5.1. 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 11.14.1.5.2 below, exceed an amount equal to the sum of:

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

11.14.1.5.1.2. 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

11.14.1.5.1.3. any delay or labor-related expense incurred by CMA 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.

11.14.1.5.2. 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 11.14.1.5.1 above.

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

11.14.1.5.3.1. consequential or similar damages, except delays or labor-related expenses described by Section 11.14.1.5.1.3 above;

11.14.1.5.3.2. exemplary damages;

11.14.1.5.3.3. any damages based on an unjust enrichment theory;

11.14.1.5.3.4. attorney's fees; or

11.14.1.5.3.5. home office overhead.

11.14.2. Negotiation. TFC's general counsel shall examine the claim and any counterclaim and negotiate with CMA in an effort to resolve them. The negotiation must begin no later than one hundred twenty (120) days after the date the claim is received. TFC's administrative rules located at 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. 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.

11.14.3. Mediation. Before the one hundred twentieth (120th) day after the date the claim is filed with TFC and before the expiration of any extension of time mutually agreed upon, the parties may agree to mediate a claim made under this Agreement. 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.

11.14.4. Adjudication. On or after the two hundred seventieth (270th) day following the date the claim is filed with TFC, unless the parties agree in writing to an extension of time, CMA may adjudicate any claim in accordance with and to the extent permitted under the Texas Civil Practice and Remedies Code, Chapter 114 or the Texas Government Code, Chapter 2260.

11.14.5. Payment of Claims. In accordance with the Texas Civil Practice and Remedies Code, Section 114.011, TFC may pay a claim resolved under Section 11.14 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. 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 rate allowed by applicable Laws and Regulations. Consistent with the Texas Civil Practice and Remedies Code, Section 114.011, property owned by the State or any unit of state government is not subject to seizure, attachment, garnishment, or any other creditors' remedy to satisfy a judgment on a breach of contract claim.

11.14.6. 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 11.14.

11.15. 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.

11.16. 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.

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

11.18. Limitation on Authority and No Other Obligations. CMA 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. CMA may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of TFC or the State of Texas.

11.19. Limitation on Adjudication Awards. CMA expressly agrees as follows: (i) In the event CMA brings a civil suit against TFC and prosecutes it to final judgment pursuant to Chapter 114 of the Code, any recovery by CMA 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; and (ii) Pre-judgment and post-judgment interest shall be limited to the rate allowed by applicable Laws and Regulations.

11.20. 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 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.

11.21. 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.

11.22. No Third-Party Beneficiaries. This Agreement is made solely and specifically among and for the benefit of the parties named herein and 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.

11.23. Further Assurances. CMA 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.

11.24. 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 of 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.

11.25. 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.

11.26. 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, to the extent noted above.

- 11.26.1. Exhibit A. UGC.
- 11.26.2. Exhibit B. Supplementary General Conditions.
- 11.26.3. Exhibit C. A/E Guidelines.
- 11.26.4. Exhibit D. Capitol Complex Master Plan.
- 11.26.5. Exhibit E. List of CMA's Key Personnel.
- 11.26.6. Exhibit F. CMA's Initial Fee Schedule and Staffing Plan.
- 11.26.7. Exhibit G. CMA's Hourly Fee Rates for Additional Services.
- 11.26.8. Exhibit H. Professional Services Schedule.

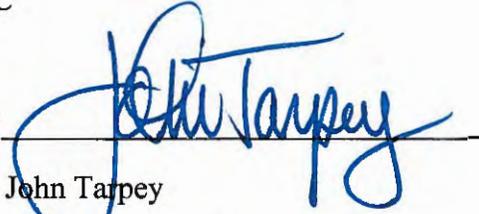
- 11.26.9. Exhibit I. CMA's Detailed Scope of Services Dated June 3, 2016.
- 11.26.10. Exhibit J. Building Information Modeling Protocols.
- 11.26.11. Exhibit K. Form of CMA's Lump Sum Maximum Fee Proposal for the Conceptual Design, Design, Construction, and Post Occupancy Phases.
- 11.26.12. Exhibit L. Initial List of CMA Project Manager and Subcontractors.
- 11.26.13. Exhibit M. Criminal Background Checks and Application Guidelines.
- 11.26.14. Exhibit N. TFC's Requirements of Insurance.
- 11.26.15. Exhibit O. CMA's Response to Request for Qualifications dated April 27, 2016 (incorporation of Exhibit O is limited by Section 6.1.12).
- 11.26.16. Exhibit P. HUB Subcontracting Plan Form.
- 11.26.17. Exhibit Q. HUB Subcontracting Plan PAR Form.
- 11.27. Approval Not a Release. Approval by TFC shall not constitute nor be deemed a release of the responsibility and liability of CMA, CMA 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 CMA, CMA Personnel, its employees, subcontractors, agents and consultants. TFC's Approval or acceptance of CMA's tasks and/or Services will not release CMA from any liability for such tasks and/or Services.
- 11.28. Survival of Terms. Termination of the Agreement for any reason shall not release CMA 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.
- 11.29. 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 CMA 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**

**BALFOUR BEATTY CONSTRUCTION,  
LLC**

By:   
Harvey Hilderbran

By:   
John Tarpey

Executive Director

President, Texas Division

Date of Execution: 9-22-16

Date of Execution: 09/22/2016

G.C. K

Dir. mh

D.E.D. m

**TFC CONTRACT NO. 16-102-000**  
**BALFOUR BEATTY CONSTRUCTION, LLC**  
**EXHIBITS CD**