PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES AGREEMENT BETWEEN THE TEXAS FACILITIES COMMISSION AND CDM SMITH, INC.

The Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 and CDM Smith, Inc. (hereinafter referred to as "A/E"), located at 9430 Research Boulevard, Suite 1-200, Austin, Texas 78759 enter into the following contract for technical advisory services (hereinafter referred to as the "Agreement") pursuant to Texas Government Code, Chapter 2254, Subchapter B (West 2016 & Supp. 2016).

I. SCOPE OF SERVICES AND PROJECT ASSIGNMENTS.

1.01. **DESCRIPTION OF SERVICES.** A/E agrees to provide professional services to assist the Center for Alternative Finance and Procurement, a division within TFC (hereinafter referred to as the "Center" or as "TFC"), with technical analysis of potential public private partnerships (hereinafter referred to as "P3") with respect to qualifying projects for responsible governmental entities, as defined in Texas Government Code Section 2267.001 (11), that have engaged the Center pursuant to Texas Government Code Chapter 771 and Section 2152.110. When requested, A/E may be required to provide the following financial analysis services, to include but not be limited to, the following:

(i) assist with all or part of the initial project feasibility analysis, including initial value for money analysis;

(ii) develop, prepare, and present briefing materials and reports to ensure clear and thorough communication with the responsible governmental entity and other key stakeholders of a P3 project;

(iii) provide information, including present verbal presentations and written materials, to responsible governmental entities and other governmental stakeholders on P3 best practices, including opportunities that can achieve cost savings or revenue generation,

(iv) assist in the initial review and/or development of the basis of design, or potentially bridging documents (if required);

(v) assist in the review and/or development of RFI/RFQ/RFP documentation, including drafting clarification questions or responses to requests for clarification from proposers, face-to-face meetings with potential proposers and shortlisted firms, i.e. document comments and questions, draft and distribute minutes to appropriate team members;

(vi) provide input during the assessment and evaluation of the technical components of proposer submissions during the procurement process;

(vii) contribute to the development of the initial project life cycle risk allocation and mitigation of retained risk strategy;

(viii) assist in analyzing the procurement options regarding construction, operations and maintenance scope, output and outcomes such as demand/revenue, service level, and performance metrics;

(ix) work in coordination with legal and financial advisors or any other advisors and supporting consultants that may be assigned to a project;

(x) develop and present briefing materials and reports to the government body of the responsible governmental entity and for stakeholder engagement efforts such as public hearings, which may include "whitepapers", presentations, and speaker notes; and

(xi) other duties as requested with regard to P3 program evaluation and development.

1.02. **PROJECTS ASSIGNMENTS.** (a) No work is guaranteed under this Agreement. TFC may, but is not obligated to, from time to time engage the services of A/E for one (1) or more specific projects and identify the particular services needed through the issuance of an "Assignment." Such Assignments shall be fully executed documents that shall be required in order to evidence any subsequent agreements between TFC and A/E whereby TFC may engage specific A/E services for a particular project(s) pursuant to the terms and conditions therein stated and in this Agreements. Such Assignments shall constitute amendments to this Agreement.

(b) All Assignments shall provide for the following, all of which shall be negotiated as part of every Assignment: (i) the description of the project; (ii) the scope of services for the project; (iii) the schedule and term of the project; (iv) the deliverables to be provided to TFC; (v) the A/E personnel assigned to the Project; (vi) TFC's responsibilities; and, (vii) compensation specific to the Assignment.

(c) All Assignment(s), and all other required documentation, must be executed by authorized representatives of both parties and shall be in substantially the same form as the Assignment template, attached hereto and incorporated herein for all purposes as "Exhibit A".

(d) A/E acknowledges and agrees that nothing in this Agreement confers any right to, expectation of, or guarantee of a minimum number of Assignments or amount of work.

(e) A/E must comply with the requirements set out in Article X regarding HUBs (as defined therein), as a condition precedent to the execution of each Assignment by TFC.

II. TERM.

2.01. **DURATION.** This Agreement shall be effective as of the date executed by the last party, and shall terminate on August 31, 2019 unless extended by the parties by amendment to this Agreement or terminated earlier, as provided below. This Agreement may be renewed for one (1) additional two (2) year period, provided that a new contract is issued and executed during each renewal period prior to the termination of the Agreement.

2.02. **EARLY TERMINATION.** This Agreement, as well as any Assignment(s), may be terminated by either party by giving written notice specifying a termination date at least thirty (30) days subsequent to the date of the notice. Upon receipt of any such notice, A/E shall immediately cease work and undertake to terminate any relevant subcontracts and shall incur no further expense related to this Agreement or any specified Assignment(s). Such early termination shall be subject to the equitable settlement of the respective interests of the parties accrued up to the date of termination.

2.03. **COMPLETION OF ASSIGNMENTS.** This Agreement shall remain in full force and effect for the period required for the completion of any Assignment, including required extensions thereto, unless terminated pursuant to the provisions of this Agreement.

III. CONSIDERATION.

3.01. **CONTRACT LIMIT AND FEES AND EXPENSES.** (a) The total amount of this Agreement shall not exceed the sum of Four Hundred Thousand and No/100 Dollars ($400,000.00), inclusive of reimbursable expenses, for each term of the Agreement. All fees and expenses that may be payable pursuant to this Agreement shall be as set forth and specified in each Assignment, and will be determined as a result of negotiations between the parties based upon the services to be rendered for the specific Project.

(b) Reasonable lodging and traveling expenses shall be considered a Reimbursable Expense under this Agreement when professional and technical personnel of A/E are away from the cities in which they are permanently assigned and are conducting authorized business directly connected with this Agreement. For the purposes of this Agreement, no travel reimbursement shall be made for travel within 100 miles of the location identified as the principal place of business or branch office of A/E, except for overnight stays, which require prior TFC project manager approval. The maximum amount for each Reimbursable Expense for travel and lodging shall be the rates established by the Texas Comptroller of Public Accounts, and outlined in Textravel, https://fmx.cpa.state.tx.us/fmx/travel/textravel/index.php, formerly known as the State of Texas Travel Allowance Guide for state employees. No Reimbursable Expenses shall exceed actual cost. In addition to those items specifically identified above as a Reimbursable Expense, permit fees and associated costs, certain other incidental direct expenses including, but not limited to, copying, telephone, data, and express mail services, and rental of special equipment or tools required in connection with provision of the Professional Services for the Project, may constitute a Reimbursable Expense; provided however, A/E must obtain the written approval of TFC prior to incurring the expense. Approval may be granted only under those limited circumstances wherein such costs are not considered normal or customary basic services under this Agreement. All requests for reimbursement must be accompanied by such documentation which, in the judgment of the TFC, allows for complete substantiation of the costs incurred.

(c) Changes in the scope of services affecting the cost of services provided for in any Assignment shall be approved by TFC by amendment to such Assignment. No compensation will be allowed for work performed without such amendment.

3.02. **PROMPT PAYMENT.** A/E shall be paid in accordance with Chapter 2251 of the Texas Government Code, also known as the "Prompt Payment Act". Any A/E services performed or delivered by A/E prior to the effective date of this Agreement or the effective date of any Assignment or after the termination of this Agreement or any Assignment cannot be compensated.

3.03. **PAYMENTS TO SUBCONTRACTORS.** For all services rendered, A/E's payment to subcontractors is due within ten (10) days after receipt of payment from the TFC and, when appropriate, TFC shall issue joint checks to the A/E and subcontractors.

IV. A/E'S REPRESENTATIONS, RESPONSIBILITY AND LIABILITY.

4.01. **PERFORMANCE REPRESENTATIONS.** (a) A/E represents that all services provided by A/E under this Agreement, and any Assignment, will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. A/E represents that any work which is specified to be delivered under an Assignment to this Agreement and which are to be paid for by TFC (collectively, the "Deliverables") under this Agreement shall be:

(i) completed in a manner consistent with standards in the applicable trade, profession, or industry; and

(ii.) conform to or exceed the specifications set forth in this Agreement.

(b) If A/E fails to provide or satisfactorily perform any of the conditions, work, or Deliverables called for by this Agreement within the time requirements specified, then TFC may require A/E to:

(i) repair or replace, at A/E's expense, any or all defective or damaged Deliverables;

(ii) refund any payment received for any defective or damaged Deliverables and, in conjunction therewith, require A/E to accept the return of any defective or damaged Deliverables at A/E's sole expense; and/or

(iii) take necessary action to provide that future performance conforms to the Agreement requirements at A/E's sole expense.

V. A/E GENERAL AFFIRMATIONS

5.01. **FINANCIAL INTERESTS/GIFTS.** (a) Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, A/E has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity,

special discount, trip, favor, or service to a public servant in connection with this Agreement or any Assignment.

(b) Pursuant to Texas Government Code, Chapter 573 and Section 2254.032, if applicable, A/E certifies that A/E knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in A/E's company or corporation. A/E further certifies that no partner, corporation, or unincorporated association which employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which A/E will be dealing on behalf of TFC.

5.02. **PRIOR EMPLOYMENT.** A/E knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in A/E's firm or corporation. A/E further certifies that no partner, corporation, or unincorporated association that employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which A/E will be dealing on behalf of TFC pursuant to the Texas Government Code, Chapter 573 and Section 2254.032. Furthermore, A/E certifies and agrees that if it employs any former employee of TFC, such employee will perform no work in connection with this Agreement during the twelve (12) month period immediately following the employee's last date of employment at TFC.

5.03. **ELIGIBILITY.** A/E certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate pursuant to Texas Government Code, Section 2155.004(b).

5.04. **FAMILY CODE.** 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 or in any Assignment and, if applicable, A/E has provided, prior to its execution of this Agreement, and prior to the execution of any Assignment, shall provide 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 and into any Assignment. A/E acknowledges that this Agreement and any Assignment may be terminated and payment may be withheld if this certification is inaccurate.

5.05. **DEBTS OR DELINQUENCIES TO STATE.** A/E understands and agrees that any payment due under this Agreement or any Assignment may be 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.

5.06. **GENERAL AND CRIMINAL BACKGROUND CHECKS.** (a) A/E shall conduct, or has conducted, a criminal background check at its own expense on each of its employees engaged in providing services under this Agreement or any Assignment prior to the commencement of such services. A/E's employee shall be eligible to perform services for the Company if he or she, to such A/E's knowledge: (i) has not been convicted of or was placed in a pre-trial diversion program for any crime involving dishonesty or breach of trust including, but not limited to, check kiting or

passing bad checks; embezzlement, drug trafficking, forgery, burglary, robbery, theft, perjury; possession of stolen property, identity theft, fraud, money laundering, shoplifting, larceny, falsification of documents; and/or (ii) has not been convicted of any sex, weapons or violent crime including but not limited to homicide, attempted homicide, rape, child molestation, extortion, terrorism or terrorist threats, kidnapping, assault, battery, and illegal weapon possession, sale or use.

(b) A/E represents and warrants that A/E and A/E's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, A/E has fully advised TFC as to the facts and circumstances surrounding the conviction.

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

5.08. **BUY TEXAS.** If A/E is authorized to make purchases under an Assignment, A/E certifies that A/E will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Texas Government Code, Chapter 2155.

5.09. **EQUAL OPPORTUNITY.** A/E shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. A/E shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, 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. A/E agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this non-discrimination article. A/E shall include the above provisions in all subcontracts pertaining to the work.

5.10. **DECEPTIVE TRADE PRACTICE ; UNFAIR BUSINESS PRACTICES.** A/E represents and warrants that it has not been found liable of Deceptive Trade Practices violations under Texas Business and Commerce Code, Chapter 17, or of any unfair business practice in any administrative hearing or court suit. A/E further certifies that it has no officers who have served as officers of

other entities who have been found liable of Deceptive Trade Practices violations or of any unfair business practices in an administrative hearing or court suit. In the event that allegations of Deceptive Trade Practices violations under Texas Business and Commerce Code, Chapter 17, or of any unfair business practices against either A/E or any of A/E's officers are currently pending in an administrative proceeding or in a lawsuit filed with any court, then A/E shall disclose all such pending matters to TFC and provide 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.

5.11. **AGENCY EXECUTIVE HEAD.** Under Texas Government Code, Section 669.003 relating to contracting with an executive of a state agency, A/E represents that no person who, in the past four (4) years served as an executive of TFC or any other State agency, was involved with or has any interest in this Agreement or any contract resulting from this Agreement. If A/E employs or has used the services of a former executive head of TFC or any other State agency, then A/E shall provide the following information: the Name of the former executive, the name of the State agency, the date of separation from State agency, the position held with A/E and the date of employment with A/E.

VI. STATE FUNDING.

6.01. **STATE FUNDING.** (a) Neither this Agreement nor any Assignment 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 or any Assignment 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.

(b) A/E agrees that this Agreement is a pass-through obligation of the state or local responsible government entity that has retained TFC for assistance in determining the feasibility of the P3 projects and procurement thereof. A/E agrees that TFC's obligation to pay A/E is limited to amounts TFC actually receives from the responsible governmental entity and that TFC's obligation to pay under this Agreement is contingent upon TFC's receipt of such funds. Furthermore, any damages otherwise due under this Agreement should not exceed the amount of funds appropriated by the Texas Legislature for payment under this Agreement, but not yet paid to A/E, for the fiscal year budget in existence at the time of the breach; **provided, however, the foregoing shall not be construed as a waiver of sovereign immunity.**

VII. COPYRIGHTS AND RIGHTS IN DATA.

7.01. **COPYRIGHTS.** A/E agrees that all Deliverables provided pursuant to this Agreement are subject to the rights of TFC in effect on the date of execution of this Agreement and any Assignment. 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 A/E are subject to copyright protection, A/E hereby grants to TFC a royalty-free, nonexclusive, and

irrevocable license to reproduce, publish, and use such and to authorize others to do so. A/E shall include appropriate provisions to achieve the purpose of this condition in all Subcontracts entered into that produce information subject to copyright protection.

7.02. **DISCLAIMERS.** All such Deliverables furnished by A/E pursuant to this Agreement and any Assignment shall be considered instruments of its services in respect to the respective project. It is understood that A/E does not represent such Deliverables to be suitable for reuse on any other study or for any other purpose(s).

7.03. **DELIVERY TO TFC.** A/E shall promptly provide copies of the Deliverables to TFC upon completion, termination, or cancellation of this Agreement and any Assignment for any reason, including all copies of the Deliverables in any form or medium specified by TFC in this Agreement and any Assignment, whether written, digital, or electronic.

7.04. **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 projects.

7.05. **NO USE OF NAME OR TRADEMARK.** A/E agrees not to make any written use of or reference to TFC's name or registered or unregistered trademarks for any marketing, public relations, advertising, display or other business purpose or make any use of TFC's facilities for any activity related to the express business purposes and interests of TFC pursuant to this Agreement and any Assignment, without the prior written consent of TFC, which consent may be withheld or granted in TFC's sole discretion.

VIII. RECORDS, AUDIT, PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

8.01. **BOOKS AND RECORDS.** A/E shall keep and maintain under generally accepted accounting principles full, true and complete records, as are necessary to fully disclose to TFC or 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 any assignment and all state and federal regulations and statutes.

8.02. **INSPECTION & AUDIT.** A/E agrees that all relevant records related to this Agreement and any Assignment or any work product under this Agreement or any Assignment, including practices of its subcontractors, shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of A/E where such records may be found, with or without notice by the Texas State Auditor's Office, the contracting agency or its contracted examiners, or the Texas Attorney General's Office, 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 or any Assignment, including direct payments to the A/E and indirect payments under a subcontract to this Agreement or any Assignment; 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.

8.03. **PERIOD OF RETENTION.** All records relevant to this Agreement and any Assignment shall be retained a minimum seven (7) years. The 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 or any applicable Assignment, 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.

8.04. **CONFIDENTIALITY.** A/E shall keep confidential all information, in whatever form, produced, prepared, observed or received by A/E to the extent that such information is:

(i) confidential by law;

(ii) marked or designated "confidential" (or words to that effect) by TFC; or,

(iii) information that A/E is otherwise required to keep confidential by this Agreement.

Furthermore, A/E will not advertise that it is doing business with TFC or use this Agreement as a marketing or sales tool without the prior written consent of TFC.

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

8.06. **ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS.** (a) 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.

(a) If applicable, A/E shall provide the Texas Department of Information Resources ("DIR") with the universal resource link, also known as 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" (*https://app.buyaccessible.gov/baw/Main.jsp*). A/E's 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/*.

IX. INSURANCE AND LEGAL OBLIGATIONS

9.01. **INSURANCE.** Prior to the commencement of work under this Agreement, A/E agrees to carry and maintain insurance in the following types and amounts for the duration of this Agreement, and furnish certificates of insurance utilizing the form in "Exhibit B", attached hereto and incorporated herein for all purposes, and make available copies of policy declaration pages and policy endorsements as evidence thereof:

(a) Workers' compensation and employers' liability coverage with minimum policy limits for employers' liability of $1,000,000.00 bodily injury per accident, $1,000,000.00 bodily injury disease policy limit and $1,000,000.00 per disease, per employee. Workers' compensation insurance coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(44). Certification in writing from the A/E and subcontractors shall be provided to TFC in accordance with Texas Labor Code, Section 406.096. The policy shall be endorsed to include Waiver of Subrogation in favor of TFC.

(b) Commercial general liability with a combined single limit of $1,000,000.00 per occurrence including products/completed operations, where appropriate, with a separate general aggregate of $2,000,000.00. The policy shall contain the following provisions:

(i.) the general aggregate limit shall apply;

(ii.) Independent A/E's coverage;

(iii.) State of Texas, TFC, its officials, directors, employees, representatives, and volunteers must be listed as an additional insureds;

(iv.) thirty (30) day Notice of Cancellation in favor of TFC; and,

(v.) Waiver of Subrogation in favor of TFC.

(c) Business automobile liability insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of $1,000,000.00 per accident for bodily injury and property damage. Alternate acceptable limits are $1,000,000.00 bodily injury per person, $1,000,000.00 bodily injury per accident and at least $1,000,000.00 property damage liability per accident. The policy shall contain the following endorsements in favor of TFC:

(i.) Waiver of Subrogation endorsement;

(ii.) thirty (30) day Notice of Cancellation endorsement; and,

(iii.) Additional Insured endorsement.

(d) Professional liability insurance with a minimum limit of $1,000,000.00 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed with respect to plans, maps, drawings, analysis, reports, surveys, change orders, designs, or specifications prepared by the insured. A/E shall maintain coverage for the duration of this Agreement and for not less than twenty-four (24) months following completion of the Project, whichever is longer.

9.02. **GENERAL REQUIREMENTS FOR INSURANCE.** (a) A/E shall be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention shall be disclosed to TFC upon request under protection of a non-disclosure agreement executed between A/E and TFC. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date.

(b) A/E shall maintain coverage for the duration of this Agreement, and shall maintain coverage for the professional liability insurance for not less than twenty-four (24) months following completion of the Project. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. A/E shall, on at least an annual basis, provide TFC with an insurance certificate as evidence of such insurance. The premium for this extended reporting period shall be paid by A/E.

(c) A/E shall not commence work under this Agreement until they have obtained the required insurance and until such insurance has been reviewed by TFC. A/E shall not allow any sub-A/E's to commence work until the required insurance has been obtained and approved. Approval of insurance by TFC shall not relieve or decrease the liability of A/E hereunder.

(d) Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A.M. Best rating of A- or better.

(e) A/E shall produce endorsements upon TFC's request to each affected policy:

(i.) that obligate A/E to notify TFC thirty (30) days prior to cancelation at the address provided in Section 10.09 should any of the policies be cancelled before the expiration; and

(ii.) that the "other" insurance clause shall not apply to the State where TFC is an additional insured shown on the policy. It is intended that policies required in this Agreement, covering both TFC and A/E, shall be considered primary coverage as applicable.

TFC shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.

(g) A/E shall not cause any insurance required under this Agreement to cancel nor permit any insurance to lapse during the term of this Agreement.

(h) TFC reserves the right to review the insurance requirements of this section during the effective period of the Agreement and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions or the claims history of the industry as well as A/E (such adjustments shall be commercially available to A/E).

(i) A/E shall provide TFC thirty (30) days written notice of erosion of the aggregate limit.

(j) Actual losses not covered by insurance as required by this Agreement shall be paid by A/E.

9.03. **LEGAL OBLIGATIONS.** A/E shall procure and maintain for the duration of this Agreement any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by A/E to provide the goods or services required by this Agreement. A/E will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. A/E agrees to be responsible for payment of any such government obligations not paid by its subconractors during performance of this Agreement.

X. MISCELLANEOUS PROVISIONS.

10.01. **INDEMNIFICATION.** **(a) <u>ACTS OR OMISSIONS.</u> A/E 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 ANY ACTS OR OMISSIONS OF A/E 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 A/E WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE**

ATTORNEY GENERAL. A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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

(c) TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY. A/E AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, A/E SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF A/E'S AND A/E'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. A/E AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE SHALL NOT BE LIABLE TO A/E, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. A/E AGREES TO INDEMNIFY AND HOLD HARMLESS TFC, THE

STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS AGREEMENT. A/E SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY A/E WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

10.02. **ASSIGNMENT AND SUBCONTRACTS.** A/E shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Agreement or any Assignment without the prior written consent of TFC. Notwithstanding this provision, it is mutually understood and agreed that A/E may subcontract with others for some or all of the services to be performed. In any approved subcontracts, A/E shall legally bind such sub-A/E to perform and make such subcontractor subject to all the duties, requirements, and obligations of A/E specified herein. Nothing herein or in any Assignment shall be construed to relieve A/E of the responsibility for ensuring that the goods delivered and/or the services rendered by A/E and/or any of its subcontractors comply with all the terms and provisions of this Agreement and any Assignment. A/E will provide written notification to TFC of any such sub-A/E performing work under this Agreement and any Assignment, including the name and taxpayer identification number of subcontractors, the task(s) being performed, and the number of subcontractor employees expected to work on the task.

10.03. **HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS).** In accordance with State law, it is TFC's policy to assist HUBs, whether minority or women-owned, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling A/E's obligations with TFC. If A/E subcontracts with others for some or all of the services to be performed under this Agreement, A/E shall comply with all HUB requirements pursuant to Texas Government Code, Chapter 2161. At or prior to the execution of an Assignment with a value that meets or exceed One Hundred Thousand and No/100 Dollars ($100,000.00), A/E must provide a completed HUB Subcontracting Plan, which shall be approved by TFC prior to execution of the Assignment, which HUB Subcontracting Plan form is attached hereto and incorporated herein for all purposes as "Exhibit C." A/E shall provide TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the HUB Subcontracting Plan Progress Assessment Report (PAR) attached hereto and incorporated herein for all purposes as "Exhibit C-1". PARs shall be submitted monthly with each invoice and are a condition of payment.

10.04. **IMMIGRATION REFORM.** (a) 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 A/E's and subcontractors who

contract with the State. A/E shall not place any employee of A/E at a worksite, nor shall A/E permit any employee, nor any subcontractor, to perform any Professional Services on behalf of or for the benefit of the State, without first confirming said employee's authorization to lawfully work in the United States.

(b) A/E warrants that A/E: (i) maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with applicable law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to A/E's senior management; and (iv) is without knowledge of any fact that would render any employee or subcontractor ineligible to legally work in the United States.

(c) A/E further acknowledges, agrees, and warrants that A/E: (i) has complied, and shall at all times during the term of the Agreement comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement, including, without limitation, the completion and maintenance of the Form I-9 for each of A/E's employees; and (iii) has responded, and shall at all times during the term of the Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Agreement, A/E shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by TFC or any state agency of A/E or any of its employees.

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

10.05. **PROHIBITION AGAINST BOYCOTTING ISRAEL.** In accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

10.06. **DRUG FREE WORK PLACE.** A/E, A/E's employees and subcontractors shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and A/E, A/E's employees and subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

10.07. **NO SMOKING.** All facilities where work is to be performed are nonsmoking buildings. A/E's employees and subcontractors are prohibited from smoking in all areas except in areas designated for smoking.

10.08. **RELATIONSHIP OF THE PARTIES.** A/E is associated with TFC only for the purposes and to the extent specified in this Agreement, and with respect to performance of the contracted services pursuant to this Agreement, A/E is and shall be an independent contractor. Subject only to the terms of this Agreement, A/E shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of A/E or any other party. A/E shall be solely responsible for, and TFC shall have no obligation with respect to:

(i) withholding of income taxes, FICA or any other taxes or fees;

(ii) industrial or workers compensation insurance coverage;

(iii) participation in any group insurance plans available to employees of the State of Texas;

(iv) participation or contributions by the State to the State Employees Retirement System;

(v) accumulation of vacation leave or sick leave; or,

(vi) unemployment compensation coverage provided by the State.

10.09. **COMPLIANCE WITH OTHER LAWS.** In the execution of this Agreement, A/E shall comply with all applicable federal, state, and local laws, including laws governing labor, equal employment opportunity, safety, and environmental protection. A/E shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Agreement.

10.10. **NOTICES.** Any notice required or permitted to be delivered under this Agreement shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the TFC or A/E, as the case may be, at the address set forth below:

For TFC: Texas Facilities Commission
Attention: Legal Services Division
1711 San Jacinto Blvd., Room 400
Austin, Texas 78701

For A/E: CDM Smith, Inc.
Attention: John Munoz
9430 Research Boulevard, Suite 1-200
Austin, Texas 78759
Phone: (512) 652-5320
E-Mail: munozjp@cdmsmith.com

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

10.11. **NAME AND ORGANIZATIONAL CHANGES.** A/E must provide TFC with written notification of all name changes and organizational changes relating to A/E including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change. A/E, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Agreement. If the change entails personnel changes for personnel performing the responsibilities of the Agreement for A/E, A/E shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Agreement and A/E shall supply the requested information within five (5) working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of A/E or successor entity, as applicable, to maintain its status as a party to this Agreement. TFC may terminate the Agreement due to any change to A/E that materially alters A/E's ability to perform under the Agreement.

10.12. **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 under this Agreement shall be in a court of competent jurisdiction in Travis County, Texas. A/E 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 any action or proceeding in such jurisdiction in respect of this Agreement or any document related hereto. **Nothing in this section shall be construed as a waiver of sovereign immunity by TFC.**

10.13. **SEVERABILITY.** If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

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

10.15. **FORCE MAJEURE.** (a) Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Agreement, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure" including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, 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 promptly notify the other party of the

Force Majeure event in writing and, if possible, such 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. However, if non-performance continues for more than thirty (30) days, TFC may terminate this Agreement immediately upon written notification to A/E.

(b) Changes in the schedule or in the design or scope of a Project as a result of any Force Majeure which affect the cost of the A/E's services under this Agreement shall be approved by TFC by amendment to this Agreement.

10.16. **DISPUTE RESOLUTION.** 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.

10.17. **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.

10.18. **SURVIVAL OF TERMS.** Termination of the Agreement for any reason shall not release A/E from any liability of 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.

[THIS SPACE INTENTIONALLY LEFT BLANK]

10.19. **ENTIRE CONTRACT & MODIFICATION.** This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistently with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification, renewal, extension or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

TEXAS FACILITIES COMMISSION

By: _____

Kay Molina

General Counsel

Date of execution: 8/11/2

G.C. _____

Dir. _____

D.E.D. _____

CDM SMITH, INC.

By: _____

Print Name: JASON R. VENIER

Print Title: ASSOCIATE

Date of execution: 8/10/17

EXHIBIT A

TFC CONTRACT NO. 17-104-000

ASSIGNMENT TEMPLATE

PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES AGREEMENT BETWEEN THE TEXAS FACILITIES COMMISSION AND CDM SMITH, INC. TFC CONTRACT NO. 17-104-000

ASSIGNMENT NO. X

THIS ASSIGNMENT NO. X (hereinafter referred to as the "Assignment No. X" or "Assignment") is entered into by and between the Texas Facilities Commission, located at 1711 San Jacinto Boulevard, Austin, Texas 78701 (hereinafter referred to as "TFC") and CDM Smith, Inc. located at [INSERT A/E ADDRESS] (hereinafter referred to as "A/E") (TFC and A/E are hereinafter referred to individually as a "Party" or collectively as "Parties"), to be effective on the Effective Date (as defined below) and the terms and conditions of which are as follows.

DESCRIPTION OF PROJECT: The project for which A/E agrees to provide Professional Services is generally described as [Insert Brief Description of Project] (hereinafter referred to as the "Project"), as further depicted in "Exhibit [A-X]," A/E's Assignment No. X Proposal dated [Insert Date], attached hereto incorporated herein for all purpose and consisting of [Text of Number] (__) pages.

DURATION OF ASSIGNMENT: The scope of services of this Assignment No. X shall be completed no later than [Insert Date], unless terminated earlier as provided in Section 2.02 of the Agreement. The schedule is subject to adjustments for possible time extension; however, any extension of time must be approved by the TFC and shall require an amendment to Assignment No. X.

SPECIAL TERMS AND CONDITIONS OF ASSIGNMENT: Terms and conditions shall be in accordance with the Agreement, any Special Conditions, and with this Assignment No. X.

SUBCONTRACTORS TO BE UTILIZED FOR PROJECT: A/E shall perform the services under this Assignment No. X with its own forces unless otherwise specified. If the scope of services is less than $100,000.00, a HUB Subcontracting Plan (HSP) is not required. If the scope of services will exceed $100,000.00, A/E shall submit an HSP for approval pursuant to Section 10.03 of the Agreement.

FEE FOR BASIC SERVICES: Fee for the services set forth in this Assignment No. X shall not exceed [Insert Fee - Text and Number]. No more frequently than once per month, A/E shall submit an invoice to TFC for services performed and reasonable and necessary costs and expenses incurred through the last day of the previous month. Any reimbursable expenses, if allowed, shall be in accordance with Section 3.01 of the Agreement.

IDENTIFICATION OF A/E PROJECT MANAGER AND ALL SUBCONTRACTORS: For this Assignment No. X, A/E shall identify the Project Manager, A/E's employees and all

subcontractors assigned to this project on the List of Project Manager and Subcontractors (hereinafter referred to as the "List"), attached hereto and incorporated herein for all purposes as "Exhibit B-X."

TFC reserves the right to approve the appointment of the A/E Project Manager and to demand that the Project Manager, and any of A/E's employees or subcontractors, be removed and replaced if, in the sole opinion of TFC, their performance on this project or any other projects, is and/or was inadequate or their continued involvement with the Project is, will, or has become detrimental to the timely and successful completion of the project.

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

ENTIRE AGREEMENT AND MODIFICATION: The Agreement and this Assignment and their integrated attachment(s) constitute the entire agreement of the Parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Assignment specifically displays a mutual intent to amend a particular part of this Assignment, general conflicts in language between any such attachment and this Assignment shall be construed consistently with the terms of this Assignment. Unless otherwise expressly authorized by the terms of this Assignment, no modification, renewal, extension, or amendment to this Assignment shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto.

TEXAS FACILITIES COMMISSION	**CDM SMITH, INC.**
By: SAMPLE – DO NOT SIGN	By: SAMPLE – DO NOT SIGN
Print Name: SAMPLE	Print Name: SAMPLE
Print Title: SAMPLE	Print Title: SAMPLE
Date of Execution: SAMPLE	Date of Execution: SAMPLE

G.C. _____
Dir. _____
D.E.D. _____

EXHIBIT A-X

A/E'S ASSIGNMENT NO. X PROPOSAL

DATED [INSERT DATE]

EXHIBIT B-X
LIST OF A/E'S PROJECT MANAGER AND SUBCONTRACTORS

1.		Name: _____ Title: _____ Role: _____ Address: _____ Phone: _____ Email: _____
2.		Name: _____ Title: _____ Role: _____ Address: _____ Phone: _____ Email:
3.		Name: _____ Title: _____ Role: _____ Address: _____ Phone: _____ Email: _____
4.		Name: _____ Title: _____ Role: _____ Address: _____ Phone: _____ Email: _____
5.		Name: _____ Title: _____ Role: _____ Address: _____ Phone: _____ Email: _____

EXHIBIT B

TFC CONTRACT NO. 17-104-000

CERTIFICATE OF INSURANCE FORM

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:
	PHONE (A/C, No, Ext): / FAX (A/C, No):
	E-MAIL ADDRESS:
	INSURER(S) AFFORDING COVERAGE / NAIC #
INSURED	INSURER A :
	INSURER B :
	INSURER C :
	INSURER D :
	INSURER E :
	INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	CLAIMS-MADE / OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	POLICY / PRO-JECT / LOC						PRODUCTS - COMP/OP AGG	$
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE / OTH-ER	
	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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EXHIBIT C

TFC CONTRACT NO. 17-104-000

HUB SUBCONTRACTING PLAN

Rev. 2/17

HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

➤ **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
- ☐ Section 2 c. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a *continuous contract** in place for more than five (5) years *meets or exceeds* the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a *continuous contract** in place for more than five (5) years *does not meet or exceed* the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - No
- ☐ Section 4 - Affirmation
- ☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
- ☐ Section 3 - Self Performing Justification
- ☐ Section 4 - Affirmation

***Continuous Contract**: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

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HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- ***11.2 percent for heavy construction other than building contracts,***
- ***21.1 percent for all building construction, including general contractors and operative builders' contracts,***
- ***32.9 percent for all special trade construction contracts,***
- ***23.7 percent for professional services contracts,***
- ***26.0 percent for all other services contracts, and***
- ***21.1 percent for commodities contracts.***

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

a. Respondent (Company) Name: _____ State of Texas VID #: _____

Point of Contact: _____ Phone #: _____

E-mail Address: _____ Fax #: _____

b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No

c. Requisition #: _____ Bid Open Date: _____ (mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT's SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

☐ - *Yes*, I will be subcontracting portions of the contract. (If *Yes*, complete Item b of this SECTION and continue to Item c of this SECTION.)

☐ - *No*, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If *No*, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

☐ - *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

☐ - *No* (If *No*, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "**Agency Special Instructions/Additional Requirements**."

☐ - *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

☐ - *No* (If *No*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract**: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT's SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

***Continuous Contract**: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: _____ Requisition #: _____

SECTION 3: SELF PERFORMING JUSTIFICATION **(If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)** If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date (mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method A (Attachment A)

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Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "*Yes*" to **SECTION 2, Items c** or **d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ **Description:** _____

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "***No***" to **SECTION 2, Items c** and **d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf..

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ **Description:** _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - Yes (If *Yes*, continue to SECTION B-4.)

☐ - No / Not Applicable (If *No* or *Not Applicable*, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you MUST comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.

b. List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers!)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			☐ - Yes ☐ - No
			☐ - Yes ☐ - No
			☐ - Yes ☐ - No

c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php.

d. List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		☐ - Yes ☐ - No
		☐ - Yes ☐ - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b,** of the completed HSP form for which you are completing the attachment.

a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number:_____ Description:_____

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmb/search/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN leave their VID / EIN field blank	Approximate Dollar Amount	Expected Percentage of Contract
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%

c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is <u>not</u> a Texas certified HUB, provide <u>written</u> justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, <u>if you (respondent) are awarded any portion of the requisition</u>, you are required to provide notice as soon as practical to **<u>all</u>** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract <u>no later than ten (10) working days</u> after the contract is awarded.

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HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of $100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____ **State of Texas VID #:** _____

Point-of-Contact: _____ **Phone #:** _____

E-mail Address: _____ **Fax #:** _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____ **Phone #:** _____

Requisition #: _____ **Bid Open Date:** _____ (mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ (Central Time) **on** _____ (Date (mm/dd/yyyy)).

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications: ☐ - Not Applicable

4. Bonding/Insurance Requirements: ☐ - Not Applicable

5. Location to review plans/specifications: ☐ - Not Applicable

EXHIBIT C-1

TFC CONTRACT NO. 17-104-000

HUB SUBCONTRACTING PLAN PROGRESS ASSESSMENT REPORT

HUB Subcontracting Plan (HSP)
Prime Contractor Progress Assessment Report

Rev. 10/16

This form must be completed and submitted to the contracting agency each month to document compliance with your HSP.

Contract/Requisition Number: _____ Date of Award: _____ Object Code: _____

Contracting Agency/University Name: _____

Contractor (Company) Name: _____ State of Texas VID #: _____

Point of Contact: _____ Phone #: _____

Reporting (Month) Period: _____ Total Amount Paid this Reporting Period to Contractor: $ -

Report HUB and Non-HUB subcontractor information

When verifying subcontractors' HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized (HUB) Directory Search located at: http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.

Subcontractor's Name	Texas certified HUB (Yes or No)	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Total Contract $ Amount from HSP with Subcontractor	Total $ Amount Paid this Reporting Period to Subcontractor	Total Contract $ Amount Paid to Date to Subcontractor	Object Code (Agency Use Only)
			$ -	$ -	$ -	
			$ -	$ -	$ -	
			$ -	$ -	$ -	
			$ -	$ -	$ -	
			$ -	$ -	$ -	
			$ -	$ -	$ -	
			$ -	$ -	$ -	
			$ -	$ -	$ -	
			$ -	$ -	$ -	
			$ -	$ -	$ -	
			$ -	$ -	$ -	
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