INTERLOCAL COOPERATION AGREEMENT BETWEEN THE TEXAS FACILITIES COMMISSION AND THE CITY OF AUSTIN

This Interlocal Cooperation Agreement ("Agreement") is entered into by and between the STATE OF TEXAS, acting by and through the Texas Facilities Commission (the "State" or "TFC") and THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS ("City"), hereinafter collectively referred to as the "Parties" and each as "Party," pursuant to the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791 (Vernon Supp. 2008 & Supp. 2015).

RECITALS:

WHEREAS, the State is developing Phase One of the 2016 Texas Capitol Complex Master Plan which includes the construction of two new office buildings, underground parking garages, a pedestrian mall, central utility plant expansion, and thermal utility tunnels; and

WHEREAS, through the creation of a pedestrian mall on Congress Avenue, between 15th Street and Martin Luther King, Jr. Boulevard, the State is creating a permanent iconic pedestrian civic space and museum district plaza that will accommodate multiple uses and draw visitors to Texas and the City of Austin; and

WHEREAS, the State will construct a five-level underground parking garage under the pedestrian mall including dedicated visitor and State employee parking which becomes available to the public after regular State business hours; and

WHEREAS, through the creation of the pedestrian mall, streetscapes, and greenscapes around the new buildings, the State will reduce impervious cover, significantly increase the number of trees in the Capitol Complex, and greatly mitigate existing heat island effects, to create pedestrian-friendly street environments; and

WHEREAS, the State is also contemplating an additional Phase Two and Phase Three as part of the 2016 Texas Capitol Complex Master Plan; and

WHEREAS, TFC commits to work collaboratively with the City to ensure a smooth and orderly implementation of the Project (as defined below), adhering to City standards in the right-of-way ("ROW") and public easements, and following necessary reviews and approvals through multiple City departments; and

WHEREAS, the City supports the development of the Project and commits to work collaboratively with the State, through TFC, to expeditiously route the Project through the City's planning, permitting and implementation processes in order to meet the State's schedules as shown on Exhibit A.

NOW, THEREFORE, in consideration of the mutual promises and benefits to each Party from the execution and performance of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which each Party acknowledges, the Parties agree as follows:

SECTION I. AGREEMENTS.

1.1 **THE PROJECT**. For this agreement, the term "Project" means the construction by TFC of the following: (i) two (2) new office buildings to be located at 1601 and 1801 North Congress Avenue; (ii) one (1) underground parking garage below North Congress Avenue, extending from 16th Street to Martin Luther King Jr. Boulevard; (iii) one (1) Central Utility Plant ("CUP") expansion at the existing Sam Houston State Office Building located at 201 East 14th Street; (iv) new underground utility tunnels extending from the CUP expansion to the two new buildings; (v) underground utility installations and relocations in support of the Project; and (vi) landscaping and streetscaping associated with the new pedestrian mall and buildings. The Project will be executed through six (6) separate design and construction packages ("Packages") and sub-Packages as defined below. TFC reserves the right to alter or add sub-Packages within Packages as required to meet Project needs. The Parties commit to working collaboratively to structure the Package submissions to promote timely and efficient plan review by the City.

1.1.1 **PACKAGE 1 – EXCAVATION.** Excavation for both buildings and the underground parking will be performed through multiple sub-Package efforts including:

1.1.1.1 Package 1A – 1801 Building Site Excavation;

1.1.1.2 Package 1B – 1601 Building Site Excavation; and

1.1.1.3 Package 1C – Congress Avenue and 17th Street Excavation.

1.1.2 **PACKAGE 2 – UTILITY RELOCATIONS.** Utility relocation activities are consolidated under one sub-Package to minimize inefficiencies and errors and to expedite the work. Utility relocations include those required by the vacation of Congress Avenue, preparation of building and underground parking sites, and other specific requirements of the Project. Package 2 will be performed through multiple sub-Package efforts including:

1.1.2.1 Package 2A – Temporary Utility Structures;

1.1.2.2 Package 2B – 1601 Congress Avenue Building;

1.1.2.3 Package 2C – Utility Tunnel;

1.1.2.4 Package 2D – Central Utility Plant; and

1.1.2.5 Package 2E – Congress Avenue Utility Relocation.

1.1.3 **PACKAGE 3 – CENTRAL UTILITY PLANT EXPANSION AND UTILITY TUNNELS.** The CUP expansion includes a new structure at the southwest corner of 14th Street and San Jacinto Boulevard, on State property adjacent to the Sam Houston State Office Building. This structure will house chillers and cooling towers required for the Capitol Complex. Utility tunnels will route northwards from the CUP expansion to serve existing and the new State office buildings in the Capitol Complex.

1.1.3.1 Package 3A – Mechanical Equipment Procurement (Not Applicable to this Agreement);

1.1.3.2 Package 3B – Utility Tunnel; and

1.1.3.3 Package 3C – Central Utility Plant.

1.1.4 **PACKAGE 4 – 1801 CONGRESS AVENUE BUILDING.** A fourteen (14) story, approximately 600,000 gross square feet ("GSF") State office building including five (5) levels of underground parking

and eight (8) levels of above grade parking. The building is programmed to receive a cultural venue to complement the existing University of Texas Blanton Museum of Art and the State's Texas State History Museum.

1.1.5 **PACKAGE 5 – 1601 CONGRESS AVENUE BUILDING.** A twelve (12) story, approximately 420,000 GSF State office building including five (5) levels of underground parking. The building is programmed to receive conferencing facilities and a relocated State child care facility.

1.1.6 **PACKAGE 6 – PEDESTRIAN MALL AND UNDERGROUND PARKING GARAGE.** Construction of five (5) levels of underground parking garage extending from 16th Street to Martin Luther King Jr., Boulevard with vehicular access from 17th Street and through the 1801 Congress Avenue building. Pedestrian mall improvements extend from 16th Street to Martin Luther King, Jr. Boulevard and through the full perimeter of the two new buildings.

1.2 **CITY PROJECT PROCESS.** The timely execution of the Project to achieve quality results that will be of mutual benefit to the City and State requires close collaboration on a number of areas related to the City's process for project reviews, approvals and permitting, as well as, construction period oversight and coordination. To achieve the desired results the following process is agreed upon by both Parties. Unless specified otherwise, all commitments in the below described process presume that submittals by TFC to the City are complete and sufficient and that review of such submittals will be a priority of the City. TFC acknowledges that incomplete plans or the lack of timely response to City plan review comments or requests for information by the City will result in additional resubmittals and/or slower response times from the City. The process may be amended in writing as agreed upon by both Parties.

1.2.1 **CITY COORDINATORS.** The City will assign an Assistant City Manager and Project facilitator to coordinate all City responsibilities for the Project. Each City department associated with the Project shall have an assigned staff member and an alternate to ensure continuity through the Project duration.

1.2.2 **TFC COORDINATORS.** TFC will assign a Deputy Executive Director and Project Manager to coordinate all State responsibilities for the Project. Each TFC division associated with the Project shall have an assigned staff member and an alternate to ensure continuity through the Project duration.

1.2.3 **CONSOLIDATED PROCESS.** The City shall use best efforts to administratively reduce or consolidate the number of boards and commissions required to review or act on the Project and expedite placement of items on agendas requiring City Council approval. This Agreement does not waive or obligate the City to waive provisions of City Code related to board and commission review or approval processes.

1.2.4 **AULCC REVIEW.** The City's Austin Utility Location and Coordination Committee ("AULCC") shall review submitted plans within 21 days following submittal to the City.

1.2.5 **ROW CLOSURES.** The City shall timely allow ROW lane closures for Project construction activities, including the movement and temporary placement of heavy equipment required for the Project as long as such proposed closures are in compliance with City mobility guidelines.

1.2.6 **WAIVED FEES.** The City shall waive temporary use of right-of-way permit fees associated with the project, as specified by a separate ordinance. The amount of the fees waived will be added as a credit to the City on the ledger maintained between TFC (and formerly, the General Services Commission) and the City.

1.2.7 **COSTS.** Unless otherwise specified in this Agreement, TFC shall be responsible for all costs associated with the Project.

1.2.8 **ANNUAL GENERAL PERMIT.** The City authorizes the Texas Facilities Commission to participate in the City of Austin's Annual General Permit Program for all portions of the Project that relate to utility relocations and tie-ins in City of Austin rights-of-way and easements. As a part of the Annual General Permit Program, TFC is allowed to:

1.2.8.1 break the Project into multiple phases for individual development permitting; and

1.2.8.2 receive work authorizations for each phase.

1.3 **STREET MODIFICATIONS.** The Traffic Impact Analysis identified recommendations to mitigate on-site traffic impacts ("Site Improvements") and off-site traffic impacts ("System Improvements") for Phase 1 of the Project.

1.3.1 **SITE IMPROVEMENTS.**

1.3.1.1 TFC shall be responsible for funding and implementing conversion of 16th Street, 17th Street, and 18th Street between Guadalupe Street and Trinity Street from one-way to two-way street operation and traffic signal modifications needed to accommodate these conversions. The City shall facilitate these modifications in conformance to the Project schedule.

1.3.1.2 TFC shall be responsible for funding and implementing a new traffic signal at Colorado Street and Martin Luther King Jr. Boulevard, which the City shall facilitate in conformance to the Project schedule.

1.3.1.3 TFC shall be responsible for funding and implementing turning lanes that may be required at intersections on 16th Street, 17th Street, and 18th Street; between Guadalupe Street to the west and Trinity Street to the east. The City shall facilitate these modifications in conformance to the Project schedule.

1.3.1.4 TFC shall be responsible for funding and implementing recommendations for new traffic signals on 16th Street, 17th Street and 18th Street, as warranted by subsequent phases of the Capitol Complex development, from Colorado Street to San Jacinto Boulevard.

1.3.2 **SYSTEM IMPROVEMENTS.**

1.3.2.1 At its sole cost, TFC shall implement recommendations for new traffic signals and turning lanes identified at intersections on 15th Street, at Guadalupe Street, and at Lavaca Street; and on Martin Luther King, Jr. Boulevard, at Trinity Street, and at San Jacinto Boulevard, as warranted by a Traffic Impact Analysis prepared for each subsequent phase of the Capitol Complex development.

1.3.2.2 The City shall facilitate these modifications in conformance to the Project schedule and system-wide priorities.

1.4 **PACKAGE SPECIFIC CITY PROCESS AGREEMENTS.** The following represent specific agreements with regard to the six (6) Packages referenced above.

1.4.1 **PACKAGE 1 – EXCAVATION.**

1.4.1.1 The City consents to temporary wastewater and stormwater utility infrastructure crossing Congress Avenue at 17th Street and 18th Street until permanent facilities are installed, provided that the utility corridors are located within the ROW, all required utility clearances are met, the location and plans are reviewed and approved by City of Austin utilities, and the City is provided a right of access to inspect.

1.4.1.2 The City consents to excavation within five (5) feet of existing utilities in Congress Avenue prior to utility easement abandonment provided all City requirements are met. Before excavating in Congress Avenue, TFC shall obtain information from the AULCC and pothole for the actual location of utilities.

1.4.1.3 Upon acceptance of utility easements for relocated wastewater easement located at the 1801 Congress Avenue Building, the City will use best efforts to expedite the abandonment of their interests in each utility easement located at the building sites once the wastewater line has been relocated, provided the easement was being used exclusively for utility purposes. Construction within the easements will be permitted if the easement is not abandoned but the utility has been relocated after verification by the City that the utility has been moved; however, such construction shall be approved through the City's plan review process prior to commencement. In any event, TFC shall apply for release of an easement within three months of commencement of construction in the easement. Before excavating at or near the 1801 Congress Avenue building, TFC shall obtain information from the AULCC and pothole for the actual location of utilities.

1.4.2 **PACKAGE 2 – UTILITY RELOCATIONS.**

1.4.2.1 The City shall timely advise TFC of any City desired utility improvements or replacements beyond those required by the Project. The City and TFC will collaborate to define the most effective means by which to incorporate the City's desired utility upgrades or replacements, and to identify the funds required to complete, into the Project. Any such utility improvements requested by the City shall be identified at the earliest opportunity and promptly managed to ensure alignment with the Project Schedule.

1.4.2.2 TFC shall be responsible for all costs, procurements and management of the Project and the City shall be responsible for its proportionate share of hard construction costs, in accordance with City cost participation ordinances, for any utility capacity upgrades required by the City to be constructed during Phase I of the Project, but that are beyond the needs of the Project and the anticipated Phase II and Phase III, except as required in Section 1.5.2. This provision shall not obligate TFC to construct or pay for Phase II or Phase III utility improvements outside the contemplated Project area.

1.4.2.3 Temporary suspension systems for utilities crossing Congress Avenue during construction do not require City building permits, but will require the City's prior plan review and approval.

1.4.2.4 Temporary wastewater and stormwater utilities will be owned, operated, and maintained by TFC or a TFC-affiliated contractor.

1.4.2.5 Upon acceptance of utility easements for relocated utilities, the City will use best efforts to expedite the abandonment of their interests in each utility easement located at the building sites once each utility has been relocated, provided the easement was being used exclusively for utility purposes. Construction within easements will be permitted if the easement in question is not abandoned but the utility has been relocated after verification by the City that the utility has been moved; however, such construction

shall be approved through the City's plan review process prior to commencement. In any event, TFC shall apply for release of an easement within three months of commencement of construction in the easement.

1.4.3 PACKAGE 3 – CENTRAL UTILITY PLANT EXPANSION AND UTILITY TUNNELS.

1.4.3.1 TFC will bore the utility tunnels to the greatest extent possible.

1.4.3.2 The new utility tunnels shall receive appropriate subterranean City easements in a form acceptable to the City.

1.4.4 PACKAGE 4 – 1801 CONGRESS AVENUE BUILDING.

1.4.4.1 License agreements and building permits for tower cranes that do not swing beyond State property are not required. TFC will coordinate with all jurisdictions on air traffic control.

1.4.4.2 Electrical service entries and waterline entries, taps, and backflow preventers, may be placed in utility corridors in lieu of easements, upon the City's approval of the utility corridors meeting City design criteria, standards, and specifications. Electric vaults must be installed within buildings at grade level and in an easement acceptable to the Parties.

1.4.5 PACKAGE 5 – 1601 CONGRESS AVENUE BUILDING.

1.4.5.1 License agreements and building permits for tower cranes that do not swing beyond State property are not required. TFC will coordinate with all jurisdictions on air traffic control.

1.4.5.2 Electrical service entries and waterline entries, taps, and backflow preventers, may be placed in utility corridors in lieu of easements, upon the City's approval of the utility corridors meeting City design criteria, standards, and specifications. Electric vaults must be installed within buildings at grade level and in an easement acceptable to the Parties.

1.4.6 PACKAGE 6 – PEDESTRIAN MALL AND UNDERGROUND PARKING GARAGE.

1.4.6.1 License agreements and building permits for tower cranes that do not swing beyond State property are not required. TFC will coordinate with all jurisdictions on air traffic control.

1.4.6.2 The City will collaborate with TFC to explore options for alternate paving treatments for the pedestrian crossing at Martin Luther King, Jr. Boulevard, at the pedestrian mall. This agreement to collaborate does not obligate either Party to supply, install, or fund such paving treatments.

1.4.6.3 Access for mounted bicyclists for the section of Congress Avenue from W. 11th Street to Martin Luther King Jr. Boulevard will remain unless and until the mounted bicycle traffic becomes a safety issue as determined by City and relevant state agencies.

1.4.6.4 TFC will grant easements to the City for fire lane access and utility maintenance.

1.4.6.5 TFC agrees to coordinate with the City in design and selection of materials for the pedestrian mall and underground parking garage as to allow the support of and use by emergency vehicles.

1.5 **PROJECT DESIGN.**

1.5.1 **FEES.** Unless specified otherwise in this Agreement, TFC shall be responsible for all costs and for the management of the design and permitting of the Project including: (i) surveying and geotechnical research, (ii) the development of architectural and engineering designs, plans and specifications for the

Project, and (iii) any required environmental assessments, clearances, and permitting associated with the Project.

1.5.2 **PROJECT DESIGN STANDARDS.** TFC will plan and design the Project in conformance with the 2016 Texas Capitol Complex Master Plan and TFC's Owners Project Requirements which mandate conformance with applicable Texas Accessibility Standards and the applicable provisions of the Americans with Disabilities Act. The Project plans and specifications relating to work in the City ROW or public easements and infrastructure that shall be owned, operated, and maintained by the City, shall comply with the City's design criteria, standards, and specifications in effect on the date of site plan approval.

1.5.3 **TUNNEL INFRASTRUCTURE AND UTILITY DESIGN.** Designs, plans and specifications for the tunnel infrastructure and for utilities that will be supplied by TFC, including without limitation, electrical, thermal and communication, shall be in accordance with TFC and City requirements.

1.5.4 **DELIVERY OF DOCUMENTS TO THE CITY.** All sets of plans, specifications and as-built documents required to be provided to the City in this Section or elsewhere in this Agreement shall be delivered to the City as complete sets of print or electronic data as required by the City. The electronic data shall be in a program format agreed upon by the Parties.

1.5.5 **MASTER PLAN COORDINATION.** TFC and the City acknowledge that TFC will continue to coordinate master planning activities for the Capitol Complex with the University of Texas, Waller Creek Conservancy, the Central Health District and the City.

1.5.6 **SUSTAINABILITY.** To the extent that life cycle cost analysis supports best value for the State, TFC will study and incorporate stormwater control measures, opportunities to enhance water quality, rainwater collection, and use of City's reclaimed water, while considering water conservation incentives offered by the City's utility providers.

1.5.7 **TREE PRESERVATION.** TFC will provide to the City $130,500.00 to facilitate the relocation of trees from the ROW that have been designated for removal by the Project and the City has identified for relocation. Alternatively, TFC agrees to make these funds available for the City to relocate trees from TFC property that have been designated for removal. Other than the above described payment, TFC will not be responsible for the relocation of any trees. The City shall timely coordinate the relocation of the designated trees with TFC to conform to the Project schedule. Payment by TFC will occur upon the removal of the designated tree(s) being relocated from the Project area by the City.

1.5.8 **TREE PLANTING.** TFC agrees to provide over 1,300 caliper inches of new trees through the planting of over 300 new trees, as part of the Phase One of the project and agrees to use best efforts to maintain and program the Project area in such a way to prevent removal of the new trees. This obligation will not prevent TFC from using standard best practices, including editing the trees to encourage growth and development of the trees in aggregate or removing trees that present an imminent hazard to life or property.

1.5.9 **ENERGY CONSERVATION.** To the extent that life cycle cost analysis supports best value for the State, TFC will study and incorporate "cool roof" design, green roof design and photovoltaic solar panels. TFC will install electric vehicle charging stations in the new structured parking facilities. TFC will collaborate with Austin Energy to identify and pursue strategies for energy efficiency design and access to rebate programs to the extent that life cycle cost analysis supports a best value for the State. TFC will incorporate strategies in building automation design for effective participation in the Load Coop Program.

1.5.10 **BIKE SHARE.** TFC will coordinate with the City to identify two (2) locations within the Capitol Complex and within the City's ROW to place Austin B-cycle stations. TFC will fund necessary site improvements within the Project limits but will not purchase the stations and/or related equipment. This provision shall not obligate the City to fund installation and/ or maintenance of Austin B-cycle stations.

1.5.11 **WAYFINDING.** TFC and the City acknowledge that TFC is developing wayfinding standards for the Capitol Complex that will provide a unique identity for the area apart from the University of Texas and the City. TFC will coordinate the Phase One Capitol Complex wayfinding design with the City of Austin Downtown Wayfinding design specifications.

1.6 **CONSTRUCTION IN THE CITY ROW.**

1.6.1 **NOTICE TO PROCEED.** TFC shall provide the City a copy of the Notice to Proceed issued to the contractors at the commencement of work located in City ROW or public easements,.

1.6.2 **ROW PLANS AND SPECIFICATIONS REVIEW.** TFC shall provide, for City review and comment, sets of the plans and specifications for the construction of the Project in City ROW or public easements at: (i) one hundred percent (100%) complete design development; (ii) sixty percent (60%) complete construction documents; and, (iii) one hundred percent (100%) complete construction documents.

1.6.3 **ROW WORK SUBSTANTIAL COMPLETION.** TFC shall notify the City of Substantial Completion of work in the City ROW or public easements. "Substantial Completion" means the date determined and certified by contractor, architect or engineer, and TFC when the work, or a designated portion thereof, is sufficiently complete, in accordance with the approved plans, so as to be operational and fit for the use intended.

1.6.3.1 TFC and the City shall schedule and perform, within fourteen (14) days after notification of Substantial Completion, a joint punch-list inspection and identify items to be corrected or completed before the City's approval of the Project ROW work.

1.6.3.2 TFC shall cause its engineers of record to provide the City with a certified letter indicating that the Project in the ROW and public easements was constructed in accordance with the construction plans and specifications submitted to the City and that the installation of all components is in accordance with all applicable federal and state laws and regulations, City rules and ordinances, and any other applicable laws and regulatory requirements.

1.6.4 **ROW CLEAR TITLE.** The City ROW improvements by the TFC or its agents shall be clear of all liens, claims and encumbrances.

1.7 **CONGRESS AVENUE VACATION.** Parties acknowledge that the Project contemplates the vacation of certain portions of Congress Avenue, 16th Street, 17th Street, and 18th Street. Parties commit to expediting the negotiation of an agreement, subject to Austin City Council approval, to facilitate the exchange of this and any other necessary property interest, including easements for utility tunnels, for a "reasonable value" in accordance with Texas Government Code §2166.052. Consideration for the exchange may include obligations contained in this Agreement.

1.7.1 **EASEMENT FORM.** The City shall grant to the State an easement in a form as agreed upon by the Parties.

1.7.2 **BUILDING ADDRESSES.** The City supports the State's proposed address numbers for the two new buildings and the retention of existing addresses for the State's buildings located on Congress Avenue.

1.8 **PARKING.** TFC commits to providing parking spaces in State parking garages in the Capitol Complex, as defined by Texas Government Code Section 411.061(a), in accordance with Texas Government Code Section 2165.2045, for the following purposes:

1.8.1 **CITY USE.** TFC and the City commit to negotiating an agreement to lease to the City parking spaces to be used for City purposes below the published monthly rental rate. The number of spaces leased is within the sole discretion of the City, up to 100 spaces. TFC may, in its sole discretion, permit the City to lease additional spaces in excess of 100 spaces. The rental term for each space will be month-to-month, however the City will retain the option to lease up to 100 spaces for ten years from the execution of the parking lease agreement.

1.8.2 **AFFORDABLE PARKING.** TFC will administer an affordable parking program in collaboration with the City utilizing available parking inventory, including the remainder of the above referenced 100 spaces that are not leased for City purposes.

1.9 **MAINTENANCE AND REPAIR OBLIGATIONS.** After conveyance of the Congress Avenue ROW to TFC, the vacated ROW will be owned, maintained and operated by the State through TFC or other applicable state agency at the State's sole expense. All other Project improvements not located in the City's ROW will be owned and maintained by the State through TFC or other applicable State Agency at the State's sole expense. The applicable State agency shall be responsible for all costs of repairing and restoring subgrades and pavements of any and all City ROW affected by State's work in, on, or around the Project, which repairs and restoration work shall be completed in accordance with the City's applicable technical codes and other governing criteria for such work.

SECTION II. COMMUNICATION.

2.1 **TFC PROJECT CONTACT.** The Deputy Executive Director of TFC's Facilities Design and Construction Division ("FDC - DED") will act on behalf of TFC with respect to the Project, coordinate with the City, receive and transmit information and instructions, and will have complete authority to interpret and define TFC's policies and decisions with respect to the Project. The FDC-DED will designate a TFC Project Manager and may designate other representatives to transmit instructions and act on behalf of TFC with respect to the Project.

2.2 **CITY'S PROJECT CONTACT.** The City's Development Services Director (the "City's Director") will act on behalf of the City with respect to the Project, coordinate with TFC, receive and transmit information and instructions, and will have complete authority to interpret and define the City's policies and decisions with respect to the Project. The City's Director may designate a City Project Manager and other representatives to transmit instructions and act on behalf of the City with respect to the Project.

2.3 **DISPUTE RESOLUTION.** If a disagreement between TFC and the City arises regarding engineering design, design and construction standards, plans and specifications, inspection and testing, deficiencies and remedial action, or any other requirement or provision of this Agreement, and the disagreement is not resolved by the TFC Project Manager and the City Project Manager, it shall be referred to the FDC-DED and City's Director for resolution. If the FDC-DED and City Director do not resolve the issue, it shall be referred as soon as possible to the Executive Director of TFC and the Assistant City Manager responsible for development services.

SECTION III. LIABILITY.

3.1 **INSURANCE.** The City, a political subdivision as defined by the Texas Labor Code, is self-insured for all third party liability coverage and all workers compensation and employer liability claims. The TFC, a political subdivision as defined by the Texas Labor Code, is self-insured for all third party liability coverage and all workers compensation and employer liability claims. TFC shall require all contractors entering into construction contracts with TFC and associated with the aforementioned Project to carry, at a minimum, the insurance required in Exhibit B.

3.2 **LIABILITY**. To the extent allowed by Texas law and the Constitution of the State of Texas, the City and TFC agree that each party is responsible for its own proportionate share of any liability for its negligent acts or omissions.

SECTION IV. SCHEDULE.

4.1 **SCHEDULE.** Construction of the Project is scheduled to begin on or after December 1, 2017, and construction of the Project is scheduled to be completed by June 30, 2022.

SECTION V. GENERAL TERMS AND CONDITIONS.

5.1 **FORCE MAJEURE.** Any delays in or failure of performance by either party, except in respect of the obligation for payments under this Agreement, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused solely by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such Party is unable to prevent (hereinafter referred to as "Force Majeure") including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods, earthquakes, hurricanes, or any other natural disaster or governmental actions. The existence of such causes of delay or failure shall extend the period of performance until after the cause of delay or failure has been removed, provided the non-performing Party exercises all reasonable due diligence to perform. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of Force Majeure.

5.2 **NOTICES.** All notices, demands and requests required in this Agreement (hereinafter referred to as "Notices") must be in writing and shall be deemed to have been properly delivered and received (i) three (3) business days after deposit in a regularly maintained receptacle for the United States Postal Service, certified mail, return receipt requested with adequate postage prepaid; or (ii) one (1) business day after deposit with Federal Express or other comparable overnight delivery system for overnight delivery with all costs prepaid. Electronic copies of all Notices shall also be sent via electronic mail to the e-mail address(es) listed below; provided, no notice shall be deemed effective notice if only delivered by electronic mail. All Notices hereunder shall be addressed as follows:

If to TFC: Texas Facilities Commission
1711 San Jacinto Blvd.
Austin, Texas 78701
Attention: Legal Services Division
Phone: (512) 475-2400
Fax: (512)236-6171

With a copy to: Texas Facilities Commission
1711 San Jacinto Boulevard
Austin, Texas 78701

Attention: John S. Raff, Deputy Executive Director
Phone: (512) 463-3567
Fax: (512) 236-6171

If to City: City of Austin
P.O. Box 1088
Austin, Texas 78767-1088
Attention: Director of Development Services

With a copy to: City of Austin
P.O. Box 1088
Austin, Texas 78767-1088
Attention: Law Department

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

5.3 **INCORPORATION BY REFERENCE.** Incorporated by reference the same as if specifically written herein are the rules, regulations, and all other requirements imposed by law, including but not limited to compliance with those applicable rules and regulations of the State of Texas and the federal government, all of which shall apply to the performance of the services under this Agreement.

5.4 **SEVERANCE.** Should any one or more provisions of this Agreement be held to be void, voidable, or unenforceable by a court of competent jurisdiction, such provision(s) shall be construed as severable from the remainder of this Agreement and shall not affect the validity of all other provisions of this Agreement, which shall remain of full force and effect.

5.5 **HEADINGS.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

5.6 **CONSTRUCTION.** The provisions of this Agreement have been jointly drafted by the Parties and will be constructed as to the fair meaning and not for or against any Party based upon any attribution of such Party as the sole source of the language in question.

5.7 **GOVERNMENTAL IMMUNITY.** Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or equity to either of the parties, nor to create any legal rights or claims on behalf of any third party. Neither the City nor TFC waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental (sovereign) immunity under the laws of the State of Texas.

5.8 **ENTIRE AGREEMENT AND MODIFICATION.** This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof, superseding all prior or contemporaneous agreements and negotiations between them. Neither Party shall be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind not expressly set forth herein and each Party agrees is it not acting in reliance on any such extraneous matters. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistently with the terms

of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification, renewal, extension, or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto. TFC certifies that it has the authority to enter into this Agreement by virtue of the authority granted in TEX. GOV. CODE ANN., Chapter 791.

The City certifies that it has the Agreement to enter into this Agreement by virtue of the authority granted in TEX. GOV. CODE ANN., Chapter 791.

5.9 **RESERVATION OF RIGHTS.** This Agreement shall not, except as expressly provided herein, operate as an amendment or waiver of any right or exercise of regulatory authority of either Party.

5.10 **AMENDMENT.** No amendment of this Agreement will be effective until the amendment has been reduced to writing and the representatives of each Party has duly approved and executed it. Any amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

5.11 **VENUE.** Venue for any suit arising under this Agreement will be in Travis County, Texas.

5.12 **DUPLICATE ORIGINALS.** The Parties may execute this Agreement in one or more duplicate originals each of equal dignity.

5.13 **EFFECTIVE DATE.** This Agreement will be effective upon due execution by all Parties.

TEXAS FACILITIES COMMISSION	**CITY OF AUSTIN**
By: Harvey Hilderbran	By: Elaine Hart
Title: Executive Director	Title: Interim City Manager
Date: 12-18-17	Date: 12-20-2017

NRG G.C.

MW Dir.

DED

Texas Facilities Commission Capitol Complex Project

Key Dates (based on priority review by the City of Austin)

Construction Milestones	Start	Substantially Complete
Pkg 1 - 1801 Wastewater Relocation	12/2017	3/2018
Pkg 1 - 1801 Excavation	3/2018	12/2018
Pkg 1 - 1601 Excavation	7/2018	3/2019
Pkg 1 - Congress Ave Excavation	7/2018	5/2019
Pkg 2 - Utility Relocation	5/2018	3/2019
Pkg 2 – TRUSS	4/2018	1/2019
Pkg 2 - 17th and 18th Street Two-Way Conversions	3/2018	8/2018
Pkg 3 - CUP Tunnel	8/2018	9/2019
Pkg 3 - CUP	4/2018	8/2020
Pkg 4 - 1801 Building & Garage	4/2019	6/2021
Pkg 4 - 1801 Rough-In & Finishes	8/2020	1/2022
Pkg 5 - 1601 Building & Garage	10/2019	5/2021
Pkg 5 - 1601 Rough-In & Finishes	12/2020	1/2022
Pkg 6 - Texas Mall Garage	12/2019	6/2021
Pkg 6 - Texas Mall Landscape & Hardscape	10/2020	9/2021

EXHIBIT B

CONTRACTOR REQUIRED MINIMUM INSURANCE

General Requirements. The following minimum insurance requirements shall be included in each construction contract entered between TFC and Contractor:

1. CONTRACTOR must complete and forward the Certificates of Insurance to TFC before construction contracts are executed as verification of coverage required below. CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance has been reviewed by TFC. Approval of insurance by TFC shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to be a limitation of liability on the part of CONTRACTOR.

2. CONTRACTOR's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.

3. If insurance policies are not written for amounts specified below, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

4. TFC reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by TFC a based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.

5. CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

6. CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

7. The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.

Business Automobile Liability Insurance. Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of TFC:

a) Waiver of Subrogation endorsement;

b) 30 day Notice of Cancellation endorsement; and

c) Additional Insured endorsement.

Provide coverage in the following types and amounts:

A minimum combined single limit of $1,000,000 per occurrence for bodily injury and property damage.

Workers' Compensation And Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation

Act (Section 401). CONTRACTOR shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to TFC's Representative for every person providing services on the Project as acceptable proof of coverage. The Certificate of Insurance, Section 00650, must be presented as evidence of coverage for CONTRACTOR. CONTRACTOR's policy shall apply to the State of Texas and include these endorsements in their favor:

a) Waiver of Subrogation, form WC 420304; and

b) 30 day Notice of Cancellation, form WC 420601.

The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:

$500,000 bodily injury per accident, $500,000 bodily injury by disease policy limit and $500,000 bodily injury by disease each employee.

Commercial General Liability Insurance. The Policy shall contain the following provisions:

a) Contractual liability coverage for liability assumed under the Contract and all contracts relative to this Project.

b) Completed Operations/Products Liability for the duration of the warranty period.

c) Explosion, Collapse and Underground (X, C & U) coverage.

d) Independent Contractors coverage (Contractors/ Subcontractors work).

e) Aggregate limits of insurance per project.

f) TFC listed as an additional insured.

g) 30 day notice of cancellation in favor of TFC.

h) Waiver of Transfer of Recovery Against Others in favor of TFC.

Provide coverages A&B with minimum limits as follows:

A combined bodily injury and property damage limit of $1,000,000 per occurrence.

Professional Liability Insurance. For Work which requires professional engineering or professional survey services to meet the requirements of the Contract, including but not limited to excavation safety systems, traffic control plans, and construction surveying, the CONTRACTOR or Subcontractors, responsible for performing the professional services shall provide Professional Liability Insurance with a minimum limit of $1,000,000 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 all professional services provided in due course of the Work of this Contract.

All endorsements naming TFC as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate:

1. Texas Facilities Commission
   1711 San Jacinto Boulevard
   Austin, Texas 78701
   Attention: Legal Services Division, Insurance Analyst