

**INTERAGENCY COOPERATION CONTRACT
BETWEEN
TEXAS FACILITIES COMMISSION
AND
DEPARTMENT OF PUBLIC SAFETY**

This Interagency Cooperation Contract (Contract) is entered into by and between the Texas Facilities Commission (TFC) and Department of Public Safety (Receiving Agency), to amend the original Contract between the parties pursuant to the authority granted by and in compliance with the provisions of "The Interagency Cooperation Act," TEX. GOV'T CODE ANN. §§ 771.001-.010 (Vernon 2012 & Supp. 2015).

I. STATEMENT OF WORK TO BE PERFORMED.

1.01. **SCOPE OF SERVICES.** TFC shall provide, or cause to be provided: (i) design documents, (ii) design and construction of switches and transformers; (iii) design and construction for routing of feeders; and (iv) design and construction of dual feed power supply for the existing Data Center, State Operations Center and future Headquarters Building for the Department of Public Safety Campus, Building B located at 5805 North Lamar, Austin, Texas 78752 (hereinafter referred to as the "Project").

II. BASIS FOR COMPUTING REIMBURSABLE COSTS.

2.01. **REIMBURSABLE COSTS.** The basis for computing reimbursable costs under this Contract shall be for actual costs incurred by TFC and developed from estimates received from third party contractors.

III. CONSIDERATION.

3.01. **CONTRACT AMOUNT.** The Project budget has been authorized as not to exceed the sum of Two Million One Hundred Eighty Two Thousand Ninety Seven and No/100 Dollars (\$2,182,097.00) for providing the services required to fulfill the terms of this Contract, and includes a line item of One Hundred Twenty Seven Thousand Five Hundred and No/100 Dollars (\$127,500.00) for professional project management services provided by TFC. The funding is provided from General Obligation Bonds for which TFC shall be responsible for oversight of all third party contracted services and DPS shall be responsible for payment of all third party contracted services and TFC's project management fees as set forth in "Exhibit A."

3.02 **ACTUAL COSTS.** If actual costs for contracted services provided by third party contractors for work requested by DPS will exceed the amount allocated for said service, TFC will provide notice and a revised estimate to DPS. Prior to exceeding the Contract Amount, the parties will agree to amend this Contract pursuant to Section 4.03 to reimburse for such increased actual costs on a dollar for dollar basis.

IV. PAYMENT FOR SERVICES.

4.01. **PAYMENT.** The funding for this Contract is provided from General Obligation Bonds. An Interagency Transaction Voucher or Invoice (ITV) for project management services will be prepared monthly by TFC. DPS shall reimburse TFC within thirty (30) calendar days from receipt of ITV or Invoice. If payment from DPS is not received within thirty (30) calendar days, TFC may cancel this Contract without further notice to DPS, and DPS shall remain liable for all actual costs incurred by TFC in delivering services under this Contract. All payments to be made to third-party contractor(s) for services performed under this Contract utilizing General Obligation Bond funding shall be paid by DPS directly to the third-party contractor(s). Within fifteen (15) calendar days of receipt of third-party contractor invoices by TFC, TFC shall forward approved invoice to DPS for DPS approval and payment. DPS shall make payments on approved invoices to third party contractors within fifteen (15) calendar days after receipt of approved invoices from TFC. If TFC forwards any approved contractor invoice to DPS later than fifteen (15) calendar days after receipt by TFC and interest accrues for late payment under the Texas Government Code, Chapter 2251, then TFC shall reimburse DPS for the portion of the interest that is attributable to TFC's lateness, either through transfer of funds or adjustment in the project management fee.

4.02. **UNIFORM STATE ACCOUNTING SYSTEM (USAS).** To the extent possible, interagency payments involving only treasury funds will be processed as paperless document transfers in the USAS system subject to audit by the Fund Accounting Division of the Comptroller's Office. Payments from treasury funds for deposit into local bank accounts will be processed in USAS through the paperless purchase vouchers process. Interagency payments received from local funds for deposit into the State Treasury must be submitted according to policies and procedures for USAS deposits.

4.03. **REIMBURSEMENT.** Reimbursements with funds contained in the State Treasury shall be made via USAS funds transfers, with Receiving Agency initiating the transfers. TFC will provide Receiving Agency with all the necessary USAS coding elements. Reimbursement with funds outside the State Treasury shall be made by Receiving Agency issuing warrants for payment to TFC.

All reimbursements must be made through the use of local funds or drawn on the appropriated item(s) or account(s) of Receiving Agency from which the agency would ordinarily make expenditures for similar services or resources. Reimbursements will be credited to the appropriation year in which the expenses were incurred.

To comply with HB 1, 84th Leg., R.S., Art. IX, Sec. 6.08, entities making payments from funding sources other than General Revenue Fund appropriations, shall remit an additional amount equal to the percentage of direct labor costs, necessary to cover the cost of the benefits.

4.04 **CAPITAL BUDGET AUTHORITY.** Pursuant to Rider 16 entitled *Capital Construction on Behalf of State Agencies* for TFC found in HB 1, 84th R.S., Art. I, any capital items related to construction of buildings and facilities including minor construction projects greater than

\$100,000 performed by TFC on behalf of other state agencies do not apply to TFC for the purpose of the capital budget rider limitations specified in HB 1, 84th Leg., R.S., Art. IX, Sec. 14.03. By signing this Contract, Receiving Agency certifies it has the requisite capital budget authority to fund the services to be provided under this Contract.

V. TERM OF CONTRACT.

5.01. **TERM.** This Contract shall be effective upon the date of the last party to sign and shall terminate on December 31, 2018, unless terminated earlier by either party, as provided in Section 5.03.

5.02. **DISPUTE RESOLUTION.** The parties agree to use good-faith efforts to decide all questions, difficulties, or disputes of any nature that may arise under or by this Contract; provided however, nothing in this paragraph shall preclude either party from pursuing any remedies as may be available under Texas law.

5.03. **EARLY TERMINATION.** Either party may terminate this Contract upon thirty (30) days prior written notice to the other. Upon receipt of notice of early termination, TFC shall cancel, withdraw, or otherwise terminate outstanding orders or subcontracts which relate to the performance of this Contract and shall otherwise cease to incur costs under this Contract. Early termination will be subject to an equitable settlement of the respective interests of the parties accrued up to the date of termination.

If this Contract is terminated for any reason, TFC will not be liable for any damages, claims, or losses, or any other amounts arising from or related to any such termination.

VI. FUNDING.

6.01. **NO DEBT.** This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or Receiving Agency 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 Contract 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.

VII. FORCE MAJEURE.

7.01. **FORCE MAJEURE.** Except as otherwise provided, neither TFC nor Receiving Agency is liable to the other for any delay in, or failure of performance, of a requirement contained in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise or due foresight, such party could not reasonably have been expected to avoid, and which,

by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure.

VIII. MISCELLANEOUS PROVISIONS.

8.01. **INDEPENDENT CONTRACTOR.** It is further mutually understood and agreed that Receiving Agency is contracting with TFC as an independent contractor.

8.02. **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 Contract.

8.03. **GOVERNING LAW AND VENUE.** This Contract shall be governed and construed in accordance with the laws of the State of Texas. **VENUE OF ANY SUIT BROUGHT FOR BREACH OF THIS CONTRACT SHALL BE FIXED IN ANY COURT OF COMPETENT JURISDICTION IN TRAVIS COUNTY, TEXAS;** provided, however, the foregoing shall not be construed as a waiver of sovereign immunity by either party.

8.04. **SEVERANCE.** Should any one or more provisions of this Contract be held to be void, voidable, or for any reason whatsoever of no force and effect, such provision(s) shall be construed as severable from the remainder of this Contract and shall not affect the validity of all other provisions of this Contract, which shall remain of full force and effect.

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

8.06. **NOTICES.** Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to TFC or Receiving Agency, as the case may be, at the addresses set forth below:

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

Receiving Agency: Department of Public Safety
5805 North Lamar
Austin, Texas 78752
Attention: James "Eddie" King
Email: James.King@dps.texas.gov
Phone: (512) 424-2219

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.

8.07. **AUDIT.** Pursuant to Section 2262.154 of the TEX. GOV'T CODE, TFC and the Receiving Agency agree to the following:

(i) the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract;

(ii) acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and

(iii) under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

8.08. **ENTIRE AGREEMENT.** This Contract constitutes the entire agreement of the parties. No other agreement, statement, or promise that is not contained in this Contract shall be binding except a subsequent written amendment to this Contract signed by both parties.

THE UNDERSIGNED do hereby certify that, (1) the services specified above are necessary and essential and are properly within the statutory functions and programs of the affected agencies of State Government, (2) the proposed arrangements serve the interest of efficient and economical administration of those agencies, and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract to the lowest responsible bidder.

TFC certifies that it has the authority to enter into this Contract by virtue of the authority granted in TEX. GOV. CODE ANN., Chapter 771.

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Receiving Agency further certifies that it has the authority to enter into this Contract by virtue of the authority granted in TEX. GOV. CODE ANN., Chapter 771.

TEXAS FACILITIES COMMISSION

DEPARTMENT OF PUBLIC SAFETY

By: 

By: 

Kay Molina

Steven C. McCraw

General Counsel

Director

Date of execution: 8/22/16

Date of execution: 9/15/16

mm Dir.

M D.E.D.

EXHIBIT A

TFC CONTRACT NO. 16-120-000

Texas DPS Contract No. 405-17-P009757.

PROJECT MANAGEMENT FEE CALCULATION

TFC's Facilities Design & Construction (FDC) is a 100% cost recovery program. Revenues are collected from project appropriations as authorized by the legislature. Project management fees are based on a percentage of the total project budget. In order to reflect the effort and manpower required for management of the projects, the percentage fee is calculated on the basis of the size and complexity of the project. The fee is a fixed, lump sum total and will not be reduced if the project is completed under budget. Services may include Project Analysis, LAR support, budgeting, scheduling, procurement of design and construction services, contract development and management, measurement and payment/payment approval, and quality control and inspection.

The total cost for the Texas Department of Public Safety (DPS) Dual Electrical Service Feed to be managed by TFC is estimated to be \$2,182,097.00. This project provides (i) design documents, (ii) design and construction of switches and transformers; (iii) design and construction for routing of feeders; and (iv) design and construction of dual feed power supply for the existing Data Center, State Operations Center and future Headquarters Building for the Department of Public Safety Campus; therefore, the classification of this program for the purpose of assessing the level of complexity and calculating the project management fee is determined to be "Renovation and Renewal - Offices, Classrooms, Deferred Maintenance and Other". Based on the fee rate schedule on the following page, the interpolated fee rate is 5.84% and the Project Management Fee is \$127,500.00.

Specific project management services to implement the scope of design and construction for this interagency agreement include but are not limited to:

(TFC did not prepare a project analysis for this program of projects, so an initial reimbursement charge for a project analysis will not be invoiced);

- Contract solicitations, best value selections and awards.
- Contract negotiation and execution:
- Bonds and insurance review and risk management;
- Management of scheduled progress, and quality of contract performance;
- Oversight of all regulatory compliance documentation;
- Management of review and approval of payments and necessary changes to the contracts;
- Management of all required project documentation;
- Management of the warranty phase for the project;
- Project Closeout; and
- Using Agency Reporting.

EXHIBIT A

TFC CONTRACT NO. 16-120-000

Texas DPS Contract No. 405-17-P009757.

PROJECT MANAGEMENT FEE CALCULATION

To align the invoicing of project management fees with the progress of the work, the fee for project management will be billed on a monthly basis in approximate equal increments for the term of the project. The term of the project is defined as beginning upon the start of procurement of design services and extending to a date three months past the substantial completion of the project.

Facilities Design & Construction Lump Sum Project Management Fee Calculation Sheet
26-Jul-16

Project Number: 00 000 0000
Project Name: DPS Austin HQ Dual Feed

When total project cost falls between the tabular limits, the rate will be determined through direct interpolation.

Fee Interpolation Formula

Project Cost Range	Dormitories	Offices	Medical
	Warehouses	Classrooms, Deferred Maint. & Other	Clinical Laboratories
New Construction			
Over \$ 100,000,000	3.35%	3.60%	3.85%
Over \$ 50,000,000	3.60%	3.85%	4.10%
Over \$ 25,000,000	3.85%	4.10%	4.35%
Over \$ 15,000,000	4.10%	4.35%	4.60%
Over \$ 10,000,000	4.35%	4.60%	4.85%
Over \$ 2,000,000	4.60%	4.85%	5.10%
Up to* \$ 1,999,999	4.60%	4.85%	5.10%
Renovation and Renewal			
Over \$ 100,000,000	4.35%	4.60%	4.85%
Over \$ 50,000,000	4.60%	4.85%	5.10%
Over \$ 25,000,000	4.85%	5.10%	5.35%
Over \$ 15,000,000	5.10%	5.35%	5.60%
Over \$ 10,000,000	5.35%	5.60%	5.85%
Over \$ 2,000,000	5.60%	5.85%	6.10%
Up to* \$ 1,999,999	5.60%	5.85%	6.10%

$$PM\ Fee = \left(\frac{Project\ Cost - Lower\ \$\ Range}{Upper\ \$\ Range - Lower\ \$\ Range} \times (\% \text{ for Upper } \$\ Range - \% \text{ for Lower } \$\ Range) \right) + \% \text{ for Lower } \$\ Range$$

- 1 \$ 2,182,097 Project Cost (expressed as dollars, e.g. 10,000,000)
- 2 \$ 10,000,000 Upper Project Cost Range (expressed as dollars, e.g. 10,000,000) **
- 3 \$ 2,000,000 Lower Project Cost Range (expressed as dollars, e.g. 10,000,000) **
- 4 5.60% TFC Fee % for Upper Project Cost Range (expressed as a number, e.g. 3.00) ***
- 5 5.85% TFC Fee % for Lower Project Cost Range (expressed as a number, e.g. 3.25) ***
- 6 5.84% Resulting TFC Fee %
- 7 \$ 127,500 Resulting TFC Lump Sum Project Management Fee - rounded to the nearest hundred dollars.

* The fee is applied as a fixed rate regardless of project cost and not interpolated.

** If the Project Cost is greater than the Upper Project Cost Range (> \$100,000,000), enter "1" for the Upper Range and "0" for the Lower Range.

*** If the Project Cost is greater than the Upper Project Cost Range (> \$100,000,000), enter the same percentages in both fields.