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

This Interagency Cooperation Contract (Contract) is entered into by and between the Tex405555as Facilities Commission (TFC) and Texas Department of Public Safety (DPS or Receiving Agency), "collectively, 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 (West 2012 & Supp. 2016).

I. STATEMENT OF WORK TO BE PERFORMED.

1.01. **SCOPE OF SERVICES.** TFC shall provide or cause to be provided, a study of feasible renovations of the Texas Department of Public Safety Crime Laboratories located at the El Paso Scott Simpson Office, Amarillo, Corpus Christi, and Austin HQ Building Q CODIS (hereinafter referred to as Project). The Parties will mutually agree upon the scope and the priority of the renovations of the crime laboratories. TFC will coordinate project activities with the DPS Facilities Bureau." Services will include the following:

(i) management of solicitation and selection of design service contractors pursuant to Texas Government Code Chapter 2254, Chapter 2166, Subchapter E, Subchapter F and Texas Government Code 2267 or selection of one of TFC's indefinite delivery indefinite quantity design professional contractors;

(ii) contract negotiation and execution;

(iii) insurance review and risk management;

(iv) coordination of design professional's activities on site and site access with DPS Facilities Bureau;

(v) management of scheduled progress, and quality of contract performance;

(vi) management of review and approval of payments and necessary changes to the contracts;

(vii) management of all required project documents;

(viii) technical review of consultant's work product; and

(ix) DPS monthly reporting.

II. BASIS FOR COMPUTING REIMBURSABLE COSTS.

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

III. CONSIDERATION.

3.01. **CONTRACT AMOUNT.** The total amount of this Contract shall not exceed the sum of Two Million Five Hundred Seventy Thousand and No/100 Dollars ($2,570,000.00) for providing the services required to fulfill the terms of this Contract, and includes a line item of One Hundred Forty Nine Thousand Nine Hundred and No/100 Dollars ($149,900.00) for professional project management services provided by TFC, as further described in Exhibit A- Project Management Fee Calculation, attached hereto and incorporated herein for all purposes. TFC will be responsible for oversight and payment for all third-party contracted services for the Project.

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. If actual costs for contracted services by third-party contractors are less than the maximum contract amount, TFC will return any amount that exceeds actual costs to DPS.

IV. PAYMENT FOR SERVICES.

4.01. **PAYMENT.** An Interagency Transaction Voucher or Invoice (ITV) for these services will be prepared by TFC for the full amount of this Contract. DPS shall reimburse TFC within thirty (30) calendar days from receipt of ITV or invoice for the full amount of this Contract. If payment by DPS is not received within thirty (30) calendar days, TFC may cancel the Contract without further notice to DPS, and DPS shall remain liable for all actual costs incurred by TFC prior to the termination of this Contract in delivering services under this Contract. All payments to be made to a third-party contractor for services performed under this Contract shall be paid by TFC directly to third-party contractor(s). TFC shall be responsible for any interest that accrues as a result of a late payment as defined under the Texas Government Code, Chapter 2251. TFC will process

all expenditures under this Contract as non-TFC capital budget expenses in that Receiving Agency shall have processed these expenditures as capital expenditures pursuant to General Appropriations Act ("GAA"), Acts 2015, H.B. 1, 84th Leg., R.S., art. IX, sec. 14.03.

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

(b) All reimbursements must be made through the use of local funds or drawn on the appropriated item(s) or account(s) of DPS 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.

(c) To comply with GAA, Acts 2015, H.B. 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.

V. TERM OF CONTRACT.

5.01. **TERM.** This Contract will be effective as of the date of the last Party to sign, and will terminate on August 31, 2020, unless extended by separate written amendment to this Contract signed by both Parties, or 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, that nothing in this paragraph will preclude either Party from pursuing any remedies as may be available under Texas law.

5.03. **EARLY TERMINATION.** (a) Either Party may terminate this Contract upon thirty (30) calendar days prior written notice to the other. Upon receipt of notice of early termination, TFC will cancel, withdraw, or otherwise terminate outstanding orders or subcontracts which relate to the performance of this Contract and will 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.

(b) 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 will not be construed as creating any debt on behalf of the State of Texas and/or DPS 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 will 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 DPS 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 will 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 DPS 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 will apply to the performance of the services under this Contract.

8.03. **CAPITAL BUDGET AUTHORITY.** Pursuant to Rider 16 entitled *Capital Construction on Behalf of State Agencies* for TFC found in GAA, Acts 2015, H.B. 1, 84th R.S., art. I (Facilities Commission), 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 GAA, Acts 2015, H.B. 1, 84th Leg., R.S., art. IX, Sec. 14.03. By signing this Contact, Receiving Agency certifies it has the requisite capital budget authority to fund the services to be provided under this Contract.

8.04. **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 WILL BE FIXED IN ANY COURT OF COMPETENT JURISDICTION IN TRAVIS COUNTY, TEXAS;** provided, however, the foregoing will not be construed as a waiver of sovereign immunity by either Party.

8.05. **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) will be construed as severable from the remainder of this Contract and will not affect the validity of all other provisions of this Contract, which will remain of full force and effect.

8.06. **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.

8.07. **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 DPS, as the case may be, at the addresses set forth below:

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

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

Notice given in any other manner will 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.

8.08. **AUDIT.** Pursuant to Section 2262.154 of the Texas Government Code, TFC and DPS agree to the following:

(a) 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;

(b) 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;

(c) 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;

(d) DPS may conduct an audit or investigation of TFC or any other entity receiving funds from DPS directly under the contract or indirectly through a subcontract under the contract;

(e) acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of DPS to conduct an audit or investigation in connection with those funds;

(f) an entity, including TFC, that is the subject of an audit or investigation by DPS must provide DPS with timely access to any information DPS considers relevant to the investigation or audit;

(g) an entity, including TFC, that is receiving funds under the contract shall maintain all such documents and other records relating to the contract for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later; and

(h) in the event that an audit by DPS reveals any errors that resulted in overpayments to an entity, including TFC, that is receiving funds under the contract, the entity shall refund to DPS the full amount of such overpayments within thirty (30) calendar days of such audit findings, or DPS at its option may deduct such amounts from any payments due to the entity.

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8.09. **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 by a subsequent written amendment to this Contract signed by both Parties.

THE UNDERSIGNED do hereby certify that: (i) the services specified above are necessary and essential and are properly within the statutory functions and programs of the affected agencies of State Government, (ii) the proposed arrangements serve the interest of efficient and economical administration of those agencies, and (iii) the services, supplies or materials contracted for are not required by Tex. Const. art. XVI, § 21 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't Code Ann. Chapters 771 and 2166.

DPS further certifies that it has the authority to enter into this Contract by virtue of the authority granted in Tex. Gov't Code Ann., Chapter 411.

TEXAS FACILITIES COMMISSION

By: _____

Kay Molina

General Counsel

Date of Execution: 8/8/17

G.C.

Dir.

D.E.D.

TEXAS DEPARTMENT OF PUBLIC SAFETY

By: _____

Steven C McCraw

Director

Date of Execution: 8/22/17

EXHIBIT A

TFC CONTRACT NO. 17-057-00

PROJECT MANAGEMENT FEE CALCULATION

Facilities Design & Construction Lump Sum Project Management Fee Calculation Sheet
1-Aug-17

Project Number: 17-012-6090
Project Name: DPS Crime Lab Feasibility Studies

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

Project Cost Range		Dormitories Garages Warehouses	Offices Classrooms, Deferred Maint. & Other	Medical 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%

Fee Interpolation Formula

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

1	$ 2,570,000	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	5.83%	Resulting TFC Fee %
7	$ 149,900	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.