

INTERAGENCY COOPERATION AGREEMENT

STATE OF TEXAS
COUNTY OF TRAVIS

THIS AGREEMENT (Agreement) is entered into between the Performing Agency and the Receiving Agency under the authority of Texas Government Code Chapter 771, "The Interagency Cooperation Act."

I. PROJECT TITLE

Continuation of work started under DPS Contract No. 405-15-P004647 and TFC Contract No. 15-093-000; provision of professional design and construction services for construction of a Command and Communications Trailer Storage Canopy and Staging Warehouse for the DPS Headquarters Campus, Austin, Texas.

II. PARTIES

Performing Agency: Texas Facilities Commission (TFC)

Receiving Agency: Department of Public Safety (DPS)

III. STATEMENT OF SERVICES TO BE PERFORMED

TFC has provided and will continue to provide services as described in the Project Title. Specific information regarding the scope of work is included in Exhibit A. Exhibit A, the previously executed agreement, is attached and constitutes part of this Agreement.

Both parties agree that TFC has performed some of the work discussed in this Agreement before the parties signed this Agreement or under the previous Agreement executed August 25, 2015. This Agreement memorializes these past and current efforts.

IV. BASIS FOR CALCULATING COSTS

Receiving Agency will make no payments to Performing Agency as all monies owed have already been paid under the previously executed agreement.

V. AGREEMENT AMOUNT

The total amount of the previously executed agreement is set forth in Exhibit A.

VI. TERM OF THE AGREEMENT

This Agreement is effective as of the date of the last person to sign the Agreement and ends on August 31, 2019. If funding is available, this Agreement may be extended, renewed, or terminated by mutual written agreement.

VII. PAYMENT FOR SERVICES

No monies are due under this Agreement as all monies owed have already been paid under the previously executed agreement.

VIII. WRITTEN MODIFICATION

This Agreement may not be modified or amended without written agreement from both parties.

IX. NOTICE

Notice will be as written in Exhibit A.

The Performing Agency and the Receiving Agency certify that:

- A. The services specified above are necessary and essential for activities that are properly within the statutory functions and programs for each the participating parties to this Agreement;
- B. The proposed arrangements serve the interest of efficient and economical administration of state government; and
- C. The services, supplies, or materials agreed upon are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under agreement to the lowest bidder.

PERFORMING AGENCY further certifies that it has the authority to perform the services agreed upon by authority granted in Texas Government Code Chapter 2165.

RECEIVING AGENCY further certifies that it has the authority to receive the services agreed upon by authority granted in Texas Government Code Ch. 411.

PERFORMING AGENCY
Texas Facilities Commission

By: JSRA
Name

Title: John S. Raff
Interim Executive Director

Date: 4.26.18

RECEIVING AGENCY
Department of Public Safety

By: SKL
Skylor Ilearn.

Title: Deputy Director,
Administration & Services

Date: 4.12.19



NRC G.C.

HW Dir.

M D.E.D.

TFC Contract No. 18-155-000
DPS Contract No. 405-15-P004647

EXHIBIT A

(9 Pages)

TFC Contract No.15-093-000

**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 Texas Facilities Commission (TFC) and Texas Department of Public Safety (DPS), 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. 2014).

I. STATEMENT OF WORK TO BE PERFORMED.

- 1.01. **SCOPE OF SERVICES.** TFC shall provide or cause to be provided, design and construction of a Command and Communications Trailer Storage Canopy and Staging Warehouse for the DPS Headquarters Campus, Austin, Texas (hereinafter referred to as "Project"). Services shall include, but not be limited, to the following: (i) project management; (ii) design; (iii) documentation; (iv) construction administration; (v) construction, and (vi) warranty management.

II. BASIS FOR COMPUTING REIMBURSABLE COSTS.

- 2.01. 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 total amount of this Contract shall not exceed Six Hundred Fifty Thousand and No/100 Dollars (\$650,000.00), and includes a line item of Twenty-Nine Thousand Nine Hundred and No/100 Dollars (\$29,900.00) for professional project management services provided by TFC, as further described in Exhibit A - PROJECT MANAGEMNET FEE CALCULATION. TFC will be responsible for oversight and payment for all third-party contracted services for the project.
- 3.02 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 "maximum contract amount" the parties will agree to amend this Contract pursuant to Section 8.08 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.

TFC Contract No.15-093-000

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.
- 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 DPS initiating the transfers. TFC will provide DPS with all the necessary USAS coding elements. Reimbursement with funds outside the State Treasury shall be made by DPS 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 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.

To comply with SB 1, 89th 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 shall be effective as of the date of the last party to sign, and shall terminate on August 31, 2017, unless terminated earlier by either party, as provided in Section 5.03.

TFC Contract No.15-093-000

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) calendar 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 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 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 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 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 DPS is contracting with TFC as an independent contractor.

TFC Contract No.15-093-000

- 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 DPS, as the case may be, at the addresses set forth below:

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

DPS: Texas Department of Public Safety
Attention: James "Eddie" King
5805 North Lamar
Austin, Texas 78752

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 DPS agree to the following:

TFC Contract No.15-093-000

(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 four (4) 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.

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,

TFC Contract No.15-093-000

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.

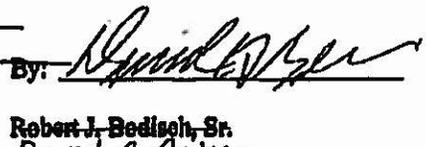
TFC certifies that it has the authority to enter into this Contract by virtue of the authority granted in TEX. GOV. CODE ANN., Chapter 771.

DPS further certifies that it has the authority to enter into this Contract by virtue of the authority granted in TEX. GOV. CODE ANN., Chapter 411.

TEXAS FACILITIES COMMISSION

TEXAS DEPARTMENT OF PUBLIC SAFETY

By: 
Harvey Hilderbran

By: 
Robert J. Bedisch, Sr.

Executive Director

David G. Baker
Deputy Director, Homeland
Security and Services

Law Enforcement Operations
Date of execution: 8/25/15

Date of execution: 8/20/15

K G.C.
M Dir.
M D.E.D.



TFC Contract No.15-093-000

EXHIBIT A

TFC CONTRACT NO. 15-093-000

PROJECT M ANAGEMENT FEE CALCULATION

EXHIBIT A
TFC CONTRACT NO. 15-093-000
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 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 classified 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. Standard services may include, but are not limited to: Project Analysis, LAR support, budgeting, scheduling, procurement of design and construction services, contract development and management, measurement and payment/payment approval, quality control and inspection.

The total cost for design and construction phase services to facilitate the renovation/expansion of the TXDPS - Communication Trailer Storage Canopy and Staging Warehouse is estimated to be \$650,000.00. This Project provides design and construction for a new canopy and warehouse; 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 "New Construction - Dormitories, Garages, Warehouses". Based on the fee rate schedule on the following page, entitled *Facilities Design & Construction Lump Sum Project Management Fee Calculation Sheet* and dated August 17, 2015, the interpolated fee rate is 4.6% and the Project Management Fee is \$29,900.00.

Specific project management services to implement the 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);
- Scope of Work definition or program verification with Using Agency;
- Management of the solicitation and selection of design and construction service contractors (Texas Government Code Chapter 2166, Subchapter E, Subchapter F and Texas Government Code 2267);
- 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 (oversight and payment);
- Management of all required project documentation; and
- Using Agency Reporting.

To align the invoicing of project management fees with the progress of the work, the fee for project management will be billed against the funds transferred to TFC 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 the completion of the design.

EXHIBIT A
TFC CONTRACT NO. 18-093-000
PROJECT MANAGEMENT FEE CALCULATION
 Facilities Design & Construction Lump Sum Project Management Fee Calculation Sheet
 IX-Aug-15

Project Number: 00-000-0000
 Project Name: DPS Cannon Trailer Canopy and Seating WHI

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

Domestic	Office	Medical
Garages	Classrooms,	Clinical
Warehouses	Deferred Maint. &	Laboratories
	Other	

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

Project Cost Range	Domestic	Office	Medical
New Construction			
Over \$ 200,000,000	3.25%	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%

* 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 "X" 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.

- 1 Project Cost (expressed as dollars, e.g. 10,000,000)
- 2 Upper Project Cost Range (expressed as dollars, e.g. 10,000,000) **
- 3 Lower Project Cost Range (expressed as dollars, e.g. 10,000,000) **
- 4 TIC Fee % for Upper Project Cost Range (expressed as a number, e.g. 3.0%) ***
- 5 TIC Fee % for Lower Project Cost Range (expressed as a number, e.g. 3.25) ***
- 6 Interpolating TIC Fee %
- 7 Resulting TIC Lump Sum Project Management Fee - rounded to the nearest hundred dollars.

**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 Texas Facilities Commission (TFC) and Texas Department of Public Safety (DPS), 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. 2014).

I. STATEMENT OF WORK TO BE PERFORMED.

- 1.01. **SCOPE OF SERVICES.** TFC shall provide or cause to be provided, design and construction of a Command and Communications Trailer Storage Canopy and Staging Warehouse for the DPS Headquarters Campus, Austin, Texas (hereinafter referred to as "Project"). Services shall include, but not be limited, to the following: (i) project management; (ii) design; (iii) documentation; (iv) construction administration; (v) construction, and (vi) warranty management.

II. BASIS FOR COMPUTING REIMBURSABLE COSTS.

- 2.01. 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 total amount of this Contract shall not exceed Six Hundred Fifty Thousand and No/100 Dollars (\$650,000.00), and includes a line item of Twenty-Nine Thousand Nine Hundred and No/100 Dollars (\$29,900.00) for professional project management services provided by TFC, as further described in Exhibit A – PROJECT MANAGEMNET FEE CALCULATION. TFC will be responsible for oversight and payment for all third-party contracted services for the project.
- 3.02 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 "maximum contract amount" the parties will agree to amend this Contract pursuant to Section 8.08 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.
- 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 DPS initiating the transfers. TFC will provide DPS with all the necessary USAS coding elements. Reimbursement with funds outside the State Treasury shall be made by DPS 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 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.

To comply with SB 1, 83rd 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 shall be effective as of the date of the last party to sign, and shall terminate on August 31, 2017, 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) calendar 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 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 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 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 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 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 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 DPS, as the case may be, at the addresses set forth below:

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

DPS: Texas Department of Public Safety
Attention: James "Eddie" King
5805 North Lamar
Austin, Texas 78752

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 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 four (4) 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.

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.

DPS further certifies that it has the authority to enter into this Contract by virtue of the authority granted in TEX. GOV. CODE ANN., Chapter 411.

TEXAS FACILITIES COMMISSION

TEXAS DEPARTMENT OF PUBLIC SAFETY

By: [Signature]

Harvey Hilderbran

Executive Director

By: [Signature]

Robert J. Bedisch, Sr.
David G. Baker
Deputy Director, Homeland
Security and Services
Law Enforcement Operations

Date of execution: 8/25/15

Date of execution: 8/20/15

[Signature] G.C.
[Signature] Dir.
[Signature] D.E.D.



TFC Contract No.15-093-000

EXHIBIT A

TFC CONTRACT NO. 15-093-000

PROJECT M ANAGEMENT FEE CALCULATION

EXHIBIT A
TFC CONTRACT NO. 15-093-000
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 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 classified 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. Standard services may include, but are not limited to: Project Analysis, LAR support, budgeting, scheduling, procurement of design and construction services, contract development and management, measurement and payment/payment approval, quality control and inspection.

The total cost for design and construction phase services to facilitate the renovation/expansion of the TXDPS – Communication Trailer Storage Canopy and Staging Warehouse is estimated to be \$650,000.00. This Project provides design and construction for a new canopy and warehouse; 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 "New Construction — Dormitories, Garages, Warehouses". Based on the fee rate schedule on the following page, entitled *Facilities Design & Construction Lump Sum Project Management Fee Calculation Sheet* and dated August 17, 2015, the interpolated fee rate is 4.6% and the Project Management Fee is \$29,900.00.

Specific project management services to implement the 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);
- Scope of Work definition or program verification with Using Agency;
- Management of the solicitation and selection of design and construction service contractors (Texas Government Code Chapter 2166, Subchapter E, Subchapter F and Texas Government Code 2267);
- 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 (oversight and payment);
- Management of all required project documentation; and
- Using Agency Reporting.

To align the invoicing of project management fees with the progress of the work, the fee for project management will be billed against the funds transferred to TFC 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 the completion of the design.

EXHIBIT A
TRC CONTRACT NO. 15-083-000
PROJECT MANAGEMENT FEE CALCULATION
Facilities Design & Construction Lump Sum Project Management Fee Calculation Sheet
 13-Aug-15

Project Number: 00-000-0000
 Project Name: DPs Comm Trailer Canopy and Staging WH

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

Project Cost Range	Domestic		Offices		Medical	
	Garages	Warehouses	Classrooms, Deferred Maint. & Other	Offices	Clinical Laboratories	Medical Laboratories

New Construction		Renovation and Renewal	
Over \$ 100,000,000	3.85%	Over \$ 100,000,000	4.85%
Over \$ 50,000,000	3.60%	Over \$ 50,000,000	4.60%
Over \$ 25,000,000	3.85%	Over \$ 25,000,000	4.85%
Over \$ 15,000,000	4.10%	Over \$ 15,000,000	5.10%
Over \$ 10,000,000	4.35%	Over \$ 10,000,000	5.35%
Over \$ 2,000,000	4.60%	Over \$ 2,000,000	5.60%
Up to*	4.85%	Up to*	5.85%

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

Fee Interpolation Formula

- 1 Project Cost (expressed as dollars, e.g. 10,000,000)
- 2 Upper Project Cost Range (expressed as dollars, e.g. 10,000,000) **
- 3 Lower Project Cost Range (expressed as dollars, e.g. 10,000,000) **
- 4 TRC Fee % for Upper Project Cost Range (expressed as a number, e.g. 3.00) ***
- 5 TRC Fee % for Lower Project Cost Range (expressed as a number, e.g. 3.25) ***
- 6 Resulting TRC Fee %
- 7 Resulting TRC 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.