INTERAGENCY COOPERATION CONTRACT BETWEEN TEXAS FACILITIES COMMISSION AND TEXAS DEPARTMENT OF BANKING, TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, AND OFFICE OF CONSUMER CREDIT COMMISSIONER

This Interagency Cooperation Contract ("Contract") is entered into by and between the Texas Facilities Commission ("TFC") and Texas Department of Banking, Texas Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner ("Receiving Agencies"), 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, Phase 1 assessment of mechanical system upgrades to the State Finance Building, located at 2601 North Lamar Boulevard, Austin, Texas. The project scope for which the study will be conducted includes: (i) project management; (ii) replacement of the boiler with a new, high efficiency, gas boiler with reconfigured combustion air intake and exhaust; (iii) replacement of the flue stack; (iv) replacement of the elevator and its call stations; and (v) construction of an elevator machine room according to applicable code (hereinafter referred to as the "Project"), as further described in Exhibit A – Phase 1 Project Assessment Proposal dated January 8, 2018, attached hereto and incorporated herein for all purposes.

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.** Receiving Agencies agree to pay TFC an amount not to exceed the sum of Nine Thousand Ten and No/100 Dollars ($9,010.00), which includes a line item of Five Hundred and No/100 Dollars ($500.00) for professional project management services provided by TFC, as further described in Exhibit B – Project Management Fee Calculation, attached hereto and incorporated herein for all purposes. TFC will be responsible for oversight and payment for all third-contracted services for the Project.

3.02. **ACTUAL COSTS.** TFC and Receiving Agencies agree that payment in advance by Receiving Agencies to TFC for services is necessary to effectively and efficiently complete the services, that such payment throughout the term of this Contract would serve a legitimate public purpose, and that the delivery of services may be expedited as a result of advanced payment, as authorized by Section 2155.383 of the Texas Government Code. If actual costs for contracted services provided by third-party contractors for work requested by Receiving Agencies will exceed the amount allocated for said service, TFC will provide notice and a revised estimate to Receiving

Agencies. Prior to exceeding the "maximum contract amount" the parties shall 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 Receiving Agencies.

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. Receiving Agencies shall reimburse TFC within thirty (30) days from receipt of ITV or invoice for the full amount of this Contract. If payment by Receiving Agencies is not received within thirty (30) days, TFC may cancel the Contract without further notice to Receiving Agencies, and Receiving Agencies shall remain liable for all actual costs incurred by TFC in delivering services under this Contract. TFC shall process all expenditures under this Contract as non-TFC capital budget expenses in that Receiving Agencies shall have processed these expenditures as capital expenditures pursuant to the General Appropriations Act ("GAA"), Acts 2017, S.B. 1, 85th 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 Receiving Agencies initiating the transfers. TFC will provide Receiving Agencies with all the necessary USAS coding elements. Reimbursement with funds outside the State Treasury shall be made by Receiving Agencies 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 Receiving Agencies from which the Agencies 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 the GAA, Acts 2017, S.B. 1, 85th 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 15 entitled *Capital Construction on Behalf of State Agencies* for TFC found in the GAA, Acts 2017, S.B. 1, 85th Leg., R.S., art. I (Facilities Commission), any capital items related to construction of buildings and facilities including minor construction projects greater than $250,000 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 the GAA, Acts 2017, S.B. 1, 85th Leg., R.S., art. IX, sec. 14.03. By signing this Contract,

Receiving Agencies 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 January 31, 2019, 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.** (a) 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.

(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 shall not be construed as creating any debt on behalf of the State of Texas and/or Receiving Agencies 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 Agencies are 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 Agencies 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 Agencies, as the case may be, at the addresses set forth below:

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

Receiving Agencies:
Attention: Charles Cooper
Department of Banking
2601 North Lamar
Austin, Texas 78705-4294
Phone: (512) 475-1325
Email: Charles.Cooper@dob.texas.gov

Attention: Caroline Jones
Texas Department of Savings and Mortgage Lending
2601 North Lamar
Austin, Texas 78705-4294

Phone: (512) 475-1038
Email: cjones@sml.texas.gov

Attention: Leslie Pettijohn
Office of Consumer Credit Commissioner
2601 North Lamar
Austin, Texas 78705-4294
Phone: (512) 936-7640
Email: Leslie.Pettijohn@occc.texas.gov

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 Texas Government Code, TFC and the Receiving Agencies 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; and

(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.

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 (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 Chapter 771, Tex. Gov't Code Ann. (West 2012 & Supp. 2016).

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Receiving Agencies further certifies that it has the authority to enter into this Contract by virtue of the authority granted in Chapter 771, Tex. Gov't Code Ann. (West 2012 & Supp. 2016).

TEXAS FACILITIES COMMISSION

By: JSRaff

John S. Raff

Interim Executive Director

Date of execution: 2.2.18

NRG G.C.

MW Dir.

DE D.E.D.

TEXAS DEPARTMENT OF BANKING

By: [signature]

Print Name: Charles G. Cooper

Title: Commissioner

Date of execution: 2/1/18

TEXAS DEPORTMENT OF SAVINGS & MORTGAGE LENDING

By: Caroline Jones

Print Name: Caroline C. Jones

Title: Commissioner

Date of execution: 2-1-18

OFFICE OF CONSUMER CREDIT

By: [signature]

Print Name: LESLIE L PETTIJOHN

Title: COMMISSIONER

Date of execution: 2.1.18

TFC Contract No. 18-146-000

Texas Department of Banking

Exhibit A – Phase 1 Project Assessment Proposal dated January 8, 2018

Chair
Robert D. Thomas

Commissioners
William D. Darby
Patti C. Jones
Mike Novak
Jack W. Perry
Betty Reinbeck
Joseph O. Slovacek

Executive Director
Harvey Hilderbran

Mailing address:
P. O. Box 13047
Austin, TX 78711-3047
(512) 463-3446
www.tfc.state.tx.us

January 8, 2018

TFC Contract No. 18-146-000 Texas Department of Banking
Texas Department of of Savings & Mortgage Lending, Office of Consumer Credit Exhibit A

Vance Ivie
Texas Department of Banking
2601 N. Lamar Blvd
Austin, TX 78705

Re: Proposal for Phase 1 Project Assessment IAC

Dear Mr. Ivie,

Pursuant to your request I am submitting TFC's proposal for an assessment of mechanical system upgrades to the State Finance Building located at 2601 N. Lamar Blvd, Austin, TX. The project scope includes: project management; replacing the boiler with a new high efficiency gas boiler with reconfigured combustion air intake and exhaust; replacing the flue stack; replacing the elevator and its call stations; and constructing an elevator machine room per code.

The Assessment phase will provide the deliverables of a report documenting the recommended Schematic Design plan and outline specifications to replace the boiler, elevator and elevator equipment while addressing any code issues; an opinion of probable construction costs; and a schedule of the project milestones and durations. The proposed fee for this Phase 1 Assessment is $9,010.

The Assessment Phase can be completed in ten business days after the Engineering services contract is executed; approximately three weeks after the execution of the Interagency Contract.

If you have any questions or need any further assistance with this matter, please do not hesitate to contact me at (512) 463-2946.

Sincerely,

Dorothy Spearman
Senior Project Manager

TFC Contract No. 18-146-000

Texas Department of Banking

Exhibit B – Phase 1 Project Management Fee Calculation

Facilities Design & Construction Lump Sum Project Management Fee Calculation Sheet
8-Jan-17

Project Number: 18-xxx-xxxx
Project Name: State Finance Building Boiler & Elevator

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

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

1	$ 8,510	Project Cost (expressed as dollars, e.g. 10,000,000)
2	$ 800,000	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	5.85%	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	5.85%	Resulting TFC Fee %
7	$ 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.