



ENERGY PERFORMANCE CONTRACT

BETWEEN

THE TEXAS FACILITIES COMMISSION

AND

E3 ENTEGRAL SOLUTIONS, INC.

TFC CONTRACT NO. 19-048-000

PROJECT NO. 18-023-0540

ENERGY PERFORMANCE CONTRACT

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THE TEXAS FACILITIES COMMISSION

AND

E3 ENTEGRAL SOLUTIONS, INC.

The Texas Facilities Commission (hereinafter referred to as “TFC” or the “Owner,” as defined herein), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701, and E3 Entegral Solutions, Inc. (hereinafter referred to as “Energy Service Company,” or “ESCO,” as defined herein), located at 2040 Highland Village Road, Suite 100, Texas 75077 enter into the following agreement for utility cost reduction measures (hereinafter referred to as the “Contract”) pursuant to Tex. Gov’t Code Ann. § 2166.406 (West 2016), to be effective as of the Effective Date (as defined below). Nothing in this Contract shall be interpreted or construed to make ESCO a third-party beneficiary hereunder.

I. DEFINITIONS.

1.1. Definitions. Unless specifically provided otherwise herein, all words and phrases in this Contract in initial caps shall have the meanings set out in this Section 1.1. In the event of any conflict between the definitions in the Exhibit A - 2015 Uniform General Conditions (hereinafter referred to as “UGC”), and the Exhibit B - 2018 Supplementary General Conditions to the 2015 Edition of the Uniform General Conditions, a copy of each of which is attached hereto and incorporated herein for all purposes as “Exhibit A,” and “Exhibit B,” respectively, or in any other document that is referenced herein and incorporated for all purposes, and the definitions in this Contract, the definitions used in this Contract shall control to the extent of the conflict.

1.1.1. *Actual Savings* is defined as the sum of the total savings realized using the procedures defined in Exhibit C - Sample Periodic Savings Report attached hereto and incorporated herein for all purposes, comprised of 64 pages, plus all adjustments and non-measured savings.

1.1.2. *Annual Savings Guarantee* is the amount of energy savings guaranteed by ESCO for a twelve (12) month period beginning on the Savings Guarantee Commencement Date and any subsequent twelve (12) month anniversary thereafter.

1.1.3. *Application for Final Payment* has the same meaning as defined in UGC, Section 1.3.

1.1.4. *Baseline Schedule* has the same meaning as defined in UGC, Section 1.6.

1.1.5. *Bid Bond* has the same meaning as Security Bond, which is defined in UGC, Subsection 5.1.2.

1.1.6. *Building(s)* means the following state office buildings all located in Austin, Texas: (i) Price Daniel, Sr. Office Building, 209 West 14th Street (“PDB”), a 9-story, 136,000 Sq. Ft. office building with basement; (ii) Tom C. Clark Office Building, 205 West 14th Street (“TCC”), a 7-story, 102,000 Sq. Ft. office building with basement; (iii) Supreme Court Building, 201 West 14th Street (“SCB”), a 4-story, 70,000 Sq. Ft. judicial building with 2-story subterranean basement; (iv) E. O. Thompson Office Building, 920 Colorado Street (“THO”), a 10-story, 68,000 Sq. Ft. office building; (v) Texas Commission on Environmental Quality (“TCEQ”) Building A, 12100 North IH 35 (“P35A”), a 3-story, 191,889 Sq. Ft. office building; (vi) TCEQ Building B, 12124 North IH 35 (“P35B”), a 3-story, 50,569 Sq. Ft. office building; (vii) TCEQ Building C, 12124 North IH 35 (“P35C”), a 3-story, 78,888 Sq. Ft. office building; (viii) TCEQ Building D, 12118 North IH 35 (“P35D”), a 3-story, 52,906 Sq. Ft. office building; and (ix) TCEQ Building E, 12118 North IH 35 (“P35E”), a 3 story, 46,330 Sq. Ft. office building.

1.1.7. *CAD* means AutoCAD DWG format unless specifically provided otherwise herein.

1.1.8. *Certificate of Final Completion* has the same meaning as defined in UGC, Section 1.7.

1.1.9. *Certificate of Substantial Completion* means the certificate signed by ESCO and TFC establishing the date of Substantial Completion and identifying responsibilities for security and maintenance as set out in UGC, Paragraph 12.1.1.2.

1.1.10. *Change Order* has the same meaning as defined in UGC, Section 1.9.

1.1.11. *Communication Protocol* means the communication and tracking procedures to be utilized for interaction and reporting between TFC, ESCO, and Subcontractors.

1.1.12. *Consideration* means the funds and any and all other forms of valid, legal consideration as discussed in Article V of this Contract.

1.1.13. *Construction Documents* has the same meaning as defined in UGC, Section 1.17 that in TFC’s sole opinion are in satisfactory quality and detail.

1.1.14. *Construction and Utility Cost Reduction Services* means the construction and design services to be provided to TFC by ESCO with respect to Utility Cost Reduction Measures, as defined in Section 1.1.75 below, as specified in Section 3.3 of the UGC and as further specified in this Contract.

1.1.15. *Contract Documents* means those documents identified in Article III of this Contract.

1.1.16. *Contract Sum* has the same meaning as defined in UGC, Section 1.14.

1.1.17. *Contract Time* has the same meaning as defined UGC, Section 1.15.

1.1.18. *Deliverables* means the construction services, which are specified to be delivered by ESCO pursuant to the terms of this Contract.

1.1.19. *Drawings* has the same meaning as defined in UGC, Section 1.22.

1.1.20. *Effective Date* means the date that the last signature of a party is affixed hereto.

1.1.21. *Energy Savings* means the reduction in use of water, sewer, natural gas, and electricity realized to TFC based on the baseline energy usage before the scope of work performed in this contract versus the measured energy usage after the scope of work has been performed for the equivalent season and period of time.

1.1.22. *EPMCS* means electronic project management control system.

1.1.23. *ESCO* has the same meaning as "Contractor" as defined in UGC, Section 1.16.

1.1.24. *Excess Savings* is the amount of Actual Savings achieved above the amount in the Performance Guarantee to date including any savings achieved during construction.

1.1.25. *Final Completion* has the same meaning as defined in UGC, Section 1.23.

1.1.26. *Final Inspection* means the same process and procedure as is described in UGC, Subsection 12.1.2.

1.1.27. *Final Inspection Deadline* means the date that is thirty (30) days after the Substantial Completion Inspection, and by which date TFC must conduct a Final Inspection.

1.1.28. *Final Payment* has the same meaning as defined in UGC, Section 1.24.

1.1.29. *Governmental Authorities* means the city, the county, any municipal utility district or similar taxing authority in which the Project is located, the State of Texas, the Federal Emergency Management Agency, the United States Army Corps of Engineers, the Environmental Protection Agency, the Texas Commission on Environmental Quality, and any other governmental or quasi-governmental agency or authority having jurisdiction over any development or construction activities on the Project or ESCO.

1.1.30. *Guaranteed Savings* means an amount of money that TFC is guaranteed to save in the form of reduced expenditures and rebates on utility bills.

1.1.31. *Guarantee Year* is the twelve (12) month period beginning on the Savings Guarantee Commencement Date and each subsequent twelve (12) month anniversary thereafter.

1.1.32. *HUB Compliance Reporting System* means the Texas Facilities Commission Historically Underutilized Business (“HUB”) online reporting system located at <https://tfc.gob2.com>. The *HUB Compliance Reporting System* is used to maintain business records documenting compliance with the HUB Subcontracting Plan (“HSP”) by submission of monthly Progress Assessment Reports (“PARs”). See Section 12.2., Historically Underutilized Businesses, and Section 12.3, Requirement to Utilize HUB Compliance Reporting System.

1.1.33. *Implementation Contract* means those portions of this Contract that refer to the Project.

1.1.34. *Interagency Agreement* means the financing arrangement that TFC will utilize to pay the Contract Sum and shall be in the form of funds administered by the State Energy Conservation Office (hereinafter referred to as “SECO”).

1.1.35. *Laws and Regulations* means any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders including those governing labor, equal employment opportunity, safety, and environmental protection, including but not limited to, all applicable requirements of Title III of the Americans with Disabilities Act and the Texas Architectural Barriers Act and the Texas Accessibility Standards found in Texas Government Code, Chapter 469, of any and all Governmental Authorities.

1.1.36. *M&V Consultant* means the third-party engineer with whom TFC has entered into a professional services agreement for the Project to review the Utility Cost Reduction Measures and the measurement and verification of savings.

1.1.37. *MEP Systems* mean mechanical, electrical, and plumbing systems.

1.1.38. *Notice to Proceed* or *NTP* means the written notice to be issued to ESCO by TFC, which shall inform ESCO of, among other things, the date to begin commencement of Work and the date anticipated for Substantial Completion.

1.1.39. *Open Items List* means a list of work activities, punchlist items, changes or other issues that are not expected by Owner and ESCO to be complete prior to Substantial Completion.

1.1.40. *Operational Savings* means an amount of actual savings achieved through reduced power factor charges, Austin Energy guaranteed rebates, Austin Energy load

cooperative incentives and avoided costs of materials, greater than the Energy Savings defined in 1.1.21.

1.1.41. *Owner* or *TFC* means and includes the State of Texas, the Texas Facilities Commission, and any other agency of the State of Texas acting through the Texas Facilities Commission in connection with this Contract.

1.1.42. *PAR* means the progress assessment report in such form as is prescribed by TFC and which has the same meaning as defined in UGC, Section 1.31.

1.1.43. *Pay Application* has the same meaning as “Application for Payment” as is defined in UGC, Section 1.2 and discussed in UGC, Subsection 10.2.2.

1.1.44. *Performance Guarantee* is the sum of the Annual Savings Guarantee for each year of the guarantee term as set forth in the Performance Guarantee Agreement is incorporated herein for all purposes as Exhibit D – Performance Guarantee Agreement, (see also Sections 2.2.2.5 and 3.1.9) or unless terminated earlier in accordance with the Contract Documents.

1.1.45. *Performance Period* is defined as the period beginning on the Savings Guarantee Commencement Date and extending through the time period as defined in the Performance Guarantee.

1.1.46. *Person* means an individual, firm, partnership, corporation, association and any other legally recognized entity.

1.1.47. *Post-Final Inspection Punchlist* means the punchlist of items that TFC will deliver to ESCO that sets out any part of the Work that was not corrected or completed in accordance with the Contract Documents as of the Final Inspection.

1.1.48. *Post-Final Inspection Punchlist Deadline* means the date that is a fixed number of days after the date of the Final Inspection, and by which date TFC shall deliver any Post-Final Inspection Punchlist to ESCO.

1.1.49. *Pre-Construction Tasks* means the mobilization and pre-construction services to be provided to TFC as part of the pre-construction phase of the Project as described in Article II below.

1.1.50. *Pre-Construction Tasks Deadline* means the date that is twenty-one (21) days after delivery of a Notice to Proceed, and by which date ESCO shall complete all Pre-Construction Tasks.

1.1.51. *Pre-Final Inspection Punchlist* means the list of final punchlist items as defined in UGC, Paragraph 12.1.1.2 that TFC will deliver to ESCO along with a Certificate of Substantial Completion.

1.1.52. *Pre-Final Inspection Punchlist Deadline* means the date that is a fixed number of days after the date of the Substantial Completion Inspection, and by which date TFC shall deliver a Pre-Final Inspection Punchlist to ESCO.

1.1.53. *Project* means the scope of work, as set forth in Article II, Section 2.1 of this Contract.

1.1.54. *Project Manager* means the individual designated by ESCO, and who must be approved by TFC, as the contact person with specific authority to properly supervise and direct the duties and responsibilities of ESCO, on behalf of ESCO, pursuant to the terms and conditions of this Contract, and who shall have decision-making authority to bind ESCO with respect to the construction services and the Project.

1.1.55. *Punchlist* means, except as may be specifically provided otherwise below, a list of items of Work to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.

1.1.56. *Record Documents* has the same meaning as defined in UGC, Section 1.34.

1.1.57. *RFI* means a request for information as defined in UGC, Section 1.35.

1.1.58. *RFI Response* means a written clarification, instruction, and/or interpretation, including, but not necessarily limited to, an architect's supplemental instructions issued in response to an RFI, which response must be consistent with the intent of the Construction Documents.

1.1.59. *Sample(s)* has the same meaning as defined in UGC, Section 1.36.

1.1.60. *Savings Guarantee Commencement Date* means the first day of the first utility billing period following the month in which ESCO delivers to TFC the project warranty letter.

1.1.61. *Schedule of Values* has the same meaning as defined in UGC, Section 1.37.

1.1.62. *Scope of Services* means the construction services as set out in Section 2.2. below.

1.1.63. *Security Bond* has the same meaning as described in UGC, Section 5.1 and Subsection 5.1.2, and shall be in the form of an approved surety bond, cash or other immediately available funds.

1.1.64. *Shop Drawings* means all drawings, diagrams, illustrations, schedules,

and other data or information which are specifically prepared or assembled by or for ESCO and submitted by ESCO to illustrate some portion of the Work.

1.1.65. *Site* means lands or areas indicated in the Contract Documents as being furnished by TFC upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by TFC which are designated for the use of ESCO.

1.1.66. *Special Conditions* has the same meaning as defined in UGC, Section 1.40.

1.1.67. *Specifications* has the same meaning as defined in UGC, Section 1.41.

1.1.68. *Subcontract* means any agreement between ESCO and a Subcontractor.

1.1.69. *Subcontractor* means a Person, including a supplier that enters into an agreement with ESCO to perform any part of the construction services.

1.1.70. *Substantial Completion* has the same meaning as defined in UGC, Section 1.44.

1.1.71. *Substantial Completion Inspection* means the process and procedure described in UGC, Subsection 12.1.1.

1.1.72. *Substantial Completion Inspection Deadline* means the date that is a fixed number of days after proper written notification is delivered to TFC by ESCO that ESCO has fully satisfied the requirements of UGC, Subsection 12.1.1, and by which TFC must conduct a Substantial Completion Inspection.

1.1.73. *TFC Project Manager* means the individual designated by TFC as the Owner's designated representative with the direct responsibility to properly supervise the design and construction of the project, as defined in Section 2.1 below, and the services being provided pursuant to this Contract on behalf of TFC, including, but not limited to: (i) serving as the point of contact between TFC and the Using Agency (if any); and (ii) supervising TFC's review and approval of the construction services.

1.1.74. *Unilateral Change Order* or *ULCO* has the same meaning as defined in UGC, Section 1.47.

1.1.75. *Using Agency* has the same meaning as defined in Texas Government Code, Section 2166.001(10) (West 2016).

1.1.76. *Utility Cost Reduction Measures* or *UCRM* means those items that are identified in the Utility Assessment Report, for which *see* Section 2.1, Description of Project.

1.1.77. *Wage Rate Notifications* means the wage rate notifications described in UGC, Subsection 2.2.1.

1.1.78. *Work* has the same meaning as defined in UGC, Section 1.48 unless specifically provided otherwise herein, and includes all furniture, fixtures, appliances, and other improvements made at, or incorporated into, the Work.

1.1.79. *Work Progress Schedule* has the same meaning as defined in UGC, Section 1.49 that sets out the critical path and deadlines for completion of discrete portions of the progress of construction of the Project beginning with the pre-construction phase and ending with final and unconditional acceptance by TFC.

II. DESCRIPTION OF PROJECT AND SCOPE OF SERVICES.

2.1. Description of Project. The Project for which ESCO agrees to provide Construction and Utility Cost Reduction Services as defined in Article II and Exhibit E – Utility Assessment Report, the Utility Assessment Report, and is generally described as Utility Cost Reduction Measures for the Buildings as defined in Section 1.1.76, above. The Utility Assessment Report will be the first deliverable provided by ESCO.

ESCO shall provide all materials, equipment, labor, and supervisory activities necessary to complete the construction for this Project.

2.2. Scope of Services. ESCO agrees to timely deliver the Construction and Utility Cost Reduction Services described in this Contract. In the event of any material conflict between the duties and responsibilities of ESCO as set out in the UGC, any Supplementary General Conditions, any Special Conditions, or in any other Contract Documents, and as set out in this Contract, the duties and responsibilities set out in this Contract shall control to the extent of any such material conflict.

2.2.1. Pre-Construction Phase. Upon receipt of a Notice to Proceed, ESCO shall commence, and soon as reasonably practicable, but in no event later than the Pre-Construction Tasks Deadline, timely complete the following Pre-Construction Tasks for the Project:

2.2.1.1. consult with staff of TFC and any representatives of the Using Agency as may be directed by TFC, and become thoroughly familiar with: (i) the Site; and (ii) any and all relevant and existing Site and facilities studies;

2.2.1.2. attend a pre-construction conference between TFC, and any other representatives as deemed appropriate by TFC, before any Work at the Site is commenced, at such time and location as may be determined by TFC. The Communication Protocol, initial Work Progress Schedule, procedures for handling Shop Drawings and other submittals, processing Pay Applications, maintaining required records, designation of Project Manager, and any other subject as may be determined by TFC to be appropriate, shall be the subject of said conference;

2.2.1.3. reaffirm the assignment and identity of ESCO's Project Manager;

2.2.1.4. if requested by TFC, assign appropriate ESCO staff to receive instruction regarding the use of EPMCS to be utilized by TFC;

2.2.1.5. prepare, for TFC's review and acceptance, a procurement schedule for items that must be ordered well in advance of commencement of construction; ESCO shall timely expedite and coordinate the ordering and delivery of products and materials that must be ordered well in advance of commencement of construction;

2.2.1.6. prepare a safety plan as specified in UGC, Section 7.1, and deliver same to TFC for review and approval;

2.2.1.7. designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be, at a minimum, the prevention of accidents and the maintenance and supervision of said safety plan; and

2.2.1.8. prepare, deliver, and periodically update as specified herein, the initial Work Progress Schedule.

2.2.1.8.1. When acceptable to TFC, this initial Work Progress Schedule shall become the Baseline Schedule for comparison to actual conditions throughout the Contract duration.

2.2.1.8.2. ESCO shall update the Work Progress Schedule as per the provisions of UGC, Subsection 9.3.2. All updated Work Progress Schedules shall include (i) the components of the Work; (ii) times of commencement and completion required of each Subcontractor; (iii) ordering and delivery of products, including those that must be ordered well in advance of construction; (iv) a clear delineation of the critical path; and (v) the occupancy requirements of TFC.

2.2.1.8.3. On a monthly basis, or as otherwise agreed in writing by TFC, ESCO shall submit written progress reports to TFC, showing percentages of completion and other information

2.2.2. Utility Assessment Report and Pre-construction Phase.

2.2.2.1. Develop, submit, revise per TFC comments and provide final approved Utility Assessment Report.

2.2.2.2. Develop, submit, revise per TFC comments and provide final approved Improvement List.

2.2.2.3. Develop, submit, revise per TFC comments and provide final approved Specifications and any addenda issued with any request for proposal (“RFP”) issued to subcontractors.

2.2.2.4. Develop, submit, revise per TFC comments and provide final approved Measurement and Verification Plan. Exhibit F - Measurement and Verification Plan prepared by ESCO and approved by TFC that measures and verifies the savings for each UCRM, and is incorporated herein for all purposes as “Exhibit F.”

2.2.2.5. Develop, submit, revise per TFC comments and provide final approved Performance Guarantee Agreement. Exhibit D - Performance Guarantee Agreement prepared by ESCO and approved by TFC, and incorporated herein for all purposes as “Exhibit D.”

2.2.2.6. Develop, submit, revise per TFC comments and provide final approved Periodic Savings Report. A sample Periodic Savings Report in the format approved by TFC is included as Exhibit C – Sample Periodic Savings Report.

2.2.3. Construction Phase. ESCO shall timely deliver to TFC the construction services for the Project as follows:

2.2.3.1. Adhere to the Work Progress Schedule established in accordance with the terms and conditions of this Contract, as it may be amended from time to time.

2.2.3.2. Requirements for the safety or protection of building occupants, workers, the Work or property at the Site or adjacent thereto, shall be accommodated when coordinating with TFC the work schedules for performance of this contract. ESCO shall not permit the performance of Work on any other day or time than previously agreed to without TFC’s prior written consent, which consent shall not be unreasonably withheld.

2.2.3.3. All requests for clarification of information provided in the Contract Documents or for direction concerning information necessary in order to perform the Work must be copied to the TFC Project Manager.

2.2.3.4. On a monthly basis, or as otherwise agreed in writing by TFC, submit written progress reports to TFC, reporting ESCO’s assessment of percentages of completion and other information required by TFC.

2.2.3.5. Unless and until instructed otherwise in writing by TFC, ESCO shall also prepare a daily log containing: (i) a statement of which days since the previous monthly report are claimed by ESCO to be subject to Force Majeure portions of the Work in progress; (ii) number of workers on site; (iii) identification of all equipment on site; (iv) problems that might affect progress of the work; and (v) all accidents, injuries, and any other information that may be requested by TFC from time-to-time, and upload said daily log

into EPMCS as directed by TFC, by the end of each next business day.

2.2.3.6. During the progress of the Work, ESCO shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris must be in compliance with all applicable Laws and Regulations.

2.2.3.7. ESCO shall plan for and develop the schedule to accommodate necessary inspections and testing of electrical systems. ESCO is strictly prohibited from: (i) de-energizing or otherwise deactivating; or (ii) energizing or otherwise activating, any electrical systems or equipment at the Site without a minimum of twenty-four (24) hour advance notice to, and written approval of, TFC. Any provision in the Contract Documents to the contrary notwithstanding, TFC reserves the right to deny and/or revoke ESCO's authority to energize or otherwise activate any electrical systems or equipment at the Site. ESCO will not be entitled to receive additional compensation for any such denial or revocation.

2.2.3.8. Prior to Substantial Completion of the Work, ESCO shall clean the Site and the Work and make it ready for utilization by TFC. At the Substantial Completion of the Work, ESCO shall store and secure all tools, appliances, construction equipment and machinery, and surplus materials necessary to allow for beneficial occupancy by the end user, and shall restore all property not designated for alteration by the Contract Documents to original condition.

2.2.3.9. Confine all construction operations within the limits of construction indicated on the Drawings or otherwise agreed to in writing by TFC, and use due care in placing construction tools, equipment, materials, and supplies so as to cause the least possible damage to property and interference with traffic. If additional easements for its operations are needed, ESCO is solely responsible for acquisition and maintenance of the easement.

2.2.3.10. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

2.2.2.11. In order for an Application for Final Payment to be considered complete and subject to review and approval, ESCO must submit to TFC a Final Payment Punchlist in such form as prescribed by TFC, jointly executed by ESCO and TFC. No approval of an Application for Final Payment is valid and enforceable unless and until the foregoing requirement is fully satisfied.

2.2.2.12. ESCO must achieve substantial completion within the period of time specified in the proposal as accepted by TFC, and which shall be stated in the NTP.

2.2.2.12.1. At such time that ESCO considers the entire Work or a portion thereof Substantially Complete, ESCO must notify TFC in writing that said Work will be ready for a Substantial Completion Inspection on a specific date.

2.2.2.12.1.1. ESCO shall include with the foregoing notice a Punchlist that sets out, among other things that may be requested by TFC, the following: (i) a list of those portions of the Work that are to be the subject of the Substantial Completion Inspection; and (ii) the Open Items List, which must include the date for scheduled completion and/or correction for each item of Work contained therein.

2.2.2.12.1.2. The delivery of the foregoing notice by ESCO shall constitute ESCO's certification that it has, in fact, inspected each and every portion of the Work that is to be the subject of the Substantial Completion Inspection and that they are completed in conformity with the Contract Documents.

2.2.2.12.2. No later than ten (10) days prior to the date of the Substantial Completion Inspection, ESCO must deliver to TFC a copy of ESCO's marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties, and like publications or parts for all installed equipment, systems, and like items as described in the Contract Documents for the Work that is the subject of the Substantial Completion Inspection.

2.2.2.12.3. Subject to the provisions of UGC, Subsection 12.1.1, and no later than the Substantial Completion Inspection Deadline, TFC shall conduct a Substantial Completion Inspection to determine whether said portion of the Work has achieved Substantial Completion.

2.2.2.12.3.1. In the event TFC determines that the Work, or any portion thereof, has not been performed or completed in accordance with the Contract Documents, and no later than the Pre-Final Inspection Punchlist Deadline, TFC shall prepare and deliver to ESCO a Pre-Final Inspection Punchlist.

2.2.2.12.3.2. In the event any fees, and/or other direct and/or consequential damages are charged to, or incurred by, TFC by reason of ESCO's failure to timely correct and/or complete the items that are the subject of the Substantial Completion Inspection, ESCO shall be liable to TFC for such fees and/or damages for which TFC may issue a ULCO and deduct those costs from the Final Payment.

2.2.2.12.4. ESCO shall achieve substantial completion within the time frame that ESCO and TFC mutually agree upon prior to issuance of the NTP and the timeframe shall begin on the date documented in the NTP.

2.2.2.13. Subject to the provisions of UGC, Subsection 12.1.2, and no later than the Final Inspection Deadline, and prior to requesting a Final Inspection, ESCO

must complete and/or correct all Work specified in the Pre-Final Punchlist.

2.2.2.13.1. Issuance of a Certificate of Substantial Completion is a condition precedent to ESCO's right to issue notice that the Work will be ready for Final Inspection.

2.2.2.13.2. By requesting a Final Inspection, ESCO thereby certifies that it has, in fact, inspected each and every portion of the Work that is set out in the Pre-Final Punchlist, and that they are completed in conformity with the Contract Documents.

2.2.2.13.3. No later than the Final Inspection Deadline, TFC shall conduct a Final Inspection, to determine whether all of the items set out in the Pre-Final Punchlist have been fully completed in accordance with the Contract Documents.

2.2.2.13.4. In the event TFC determines that any of the Pre-Final Inspection Punchlist items have not been corrected or completed in accordance with the Contract Documents, TFC shall prepare and deliver to ESCO, no later than the Post-Final Inspection Punchlist Deadline, a Post-Final Inspection Punchlist.

2.2.2.13.5. No later than ten (10) days after receipt of the Post-Final Inspection Punchlist, and prior to submitting a request for Final Payment, ESCO must complete and/or correct all Work specified in the Post-Final Inspection Punchlist.

2.2.2.13.6. In the event any fees and/or other consequential damages are charged to, or incurred by, TFC by reason of ESCO's failure to timely correct and/or complete the items that are the subject of the Final Inspection, ESCO shall be liable to TFC for such fees and/or damages.

2.2.2.13.7. At final completion, ESCO shall remove all tools, appliances, construction equipment and machinery, and surplus materials from the Site.

2.2.2.14. In order for an Application for Final Payment to be considered complete and subject to review and approval, ESCO must deliver to TFC:

2.2.2.14.1. a fully completed and executed Final Payment Checklist in such form as is prescribed by TFC;

2.2.2.14.2. all test reports; and

2.2.2.14.3. all Close-out Documents.

2.2.2.14.3.1. No approval of an Application for Final Payment is valid and enforceable unless and until the foregoing requirements are fully satisfied.

2.2.2.14.3.2. Issuance of a Certificate of Final Completion is a condition precedent to ESCO's right to receive Final Payment.

2.2.3. ESCO Services During All Phases. ESCO shall timely deliver to TFC the following services, as applicable, during all phases for which ESCO is obligated to provide construction services:

2.2.3.1. participate in all explanatory presentations as may be requested by TFC;

2.2.3.2. critically review and closely scrutinize all documents submitted by all Subcontractors, suppliers, and all other third-parties;

2.2.3.3. thoroughly review and closely scrutinize the performance, constructability, schedules, and costs of all of its Subcontractors and suppliers;

2.2.3.4. critically review and evaluate Subcontractor's proposed means, methods, schedule, and costs as relevant to each Subcontractor's discipline;

2.2.3.5. maintain work progress and products consistent with the schedules;

2.2.3.6. promptly communicate with pertinent parties, including topics regarding information needs and responses to needs of other parties;

2.2.3.7. actively participate in all meetings and/or teleconferences to bring the full measure of ESCO's collective experience, expertise and recommendations to the Project as it pertains to the overall Project or to a specific discipline including, but not limited to, matters concerning the proposed site use and improvements, selection of materials, and building systems and equipment;

2.2.3.8. ensure that each Subcontractor includes thorough examinations of all documents they author, for accuracy, intended completeness, and constructability as their standard of care for the Project;

2.2.3.9. ensure that its Project Manager, and any other representative of ESCO whose presence is requested by TFC, attend all meetings and participate in all conference calls that are scheduled by TFC; and

2.2.3.10. cooperate with any third party or commissioning agent that may be engaged by TFC.

2.2.4. TFC Approvals. Any provisions in this Contract to the contrary notwithstanding, all consents and/or approvals by TFC shall be in its sole and absolute

discretion, and must be in writing.

2.2.4.1. No changes to: (i) the scope of the construction services; or (ii) the Consideration, shall be valid or enforceable unless evidenced by a fully executed written amendment to this Contract.

2.2.4.2. To the extent that TFC approval is required to authorize incurring any costs, such approval must be acquired prior to incurring any such costs.

2.2.4.3. ESCO is not authorized to commence providing any construction services to TFC or any Using Agency with respect to the Project unless and until an appropriate Notice to Proceed is delivered by TFC.

2.2.4.4. TFC, including by and through the TFC Project Manager, reserves the right, if deemed appropriate by TFC in its sole discretion, to extend any of the deadlines set out in this Contract.

2.2.4.5. TFC hereby reserves the right, if deemed appropriate by TFC in its sole discretion, to conduct reviews of inspections during the course of design and construction of the Project. However, ESCO shall not be relieved of any of its obligations arising pursuant to this Contract.

2.2.4.6. No inspections of the Project conducted by TFC during the course of construction, either singularly or in the aggregate, shall reduce the level or extent of ESCO's responsibilities arising pursuant to this Contract. Neither the approval and/or final acceptance of the Project or any Deliverables, the payment of any Pay Application, or the issuance of any Certificates of Final or Substantial Completion by TFC shall constitute, nor be deemed, a release of ESCO's obligation to perform and timely deliver the construction services in a manner consistent with: (i) that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; and (ii) as required by the Contract Documents.

III. CONTRACT DOCUMENTS.

3.1. Contract Documents. In performing its design and construction services for the Project, ESCO shall be bound by, and comply with, the following Contract Documents:

3.1.1. UGC. The 2015 UGC, "Exhibit A."

3.1.2. Supplementary General Conditions. The 2018 Supplementary General Conditions to the 2015 Edition of the Uniform General Conditions, "Exhibit B."

3.1.3. Special Conditions. The Special Conditions to the UGC, if any.

3.1.4. Sample Periodic Savings Report. A sample of the Periodic Savings

Report in the format approved by TFC, "Exhibit C."

3.1.5. Performance Guarantee Agreement. The Performance Guarantee Agreement prepared by ESCO and approved by TFC, "Exhibit D."

3.1.6. Utility Assessment Report. The Utility Assessment Report, Exhibit E – Utility Assessment Report, prepared by ESCO and approved by TFC.

3.1.7. Measurement and Verification Plan. The Measurement and Verification Plan prepared by ESCO and approved by TFC that measures and verifies the savings for each UCRM, incorporated herein for all purposes as "Exhibit F."

3.1.8. Certification Regarding Wage Rate Notifications, a sample for which is attached hereto and incorporated herein as "Exhibit G."

3.1.9. List of Project Manager and Subcontractors. A list of who will be assigned as Project Manager and Subcontractors, "Exhibit H."

3.1.5. Criminal Background Checks and Application Guidelines, "Exhibit I."

3.1.6. Initial Approved HUB Subcontracting Plan, "Exhibit J."

3.1.7. HUB Subcontracting Plan [Form], "Exhibit K."

3.1.8. HUB Subcontracting Plan PAR [Form], "Exhibit L."

3.1.9. Tier 1 Product and Manufacturer's List. To be prepared by ESCO and upon approval by TFC incorporated herein as "Exhibit M."

3.1.10. Payment and Performance Bonds [FORMS], "Exhibit N."

3.1.11. ESCO's Response to RFQ. Any additional services or provisions depicted in Exhibit O - ESCO's Response to Request For Qualifications ("RFQ") No. 303-8-01186, attached hereto and incorporated herein for all purposes, to the extent any warranties, representations, and/or promises of additional services are made therein, and only to that extent.

3.1.12. Improvement List. The Improvement List developed by ESCO and approved by TFC, incorporated herein for all purposes as "Exhibit P."

3.1.13. Specifications. Any Specifications or Drawings prepared by ESCO, and any addenda issued with any request for proposal ("RFP") issued to subcontractors, which shall be submitted by ESCO, approved by TFC, and incorporated herein for all purposes as "Exhibit Q."

3.1.14. Schedule of Values. Must be submitted and approved by TFC, as per UGC, Subsection 10.1.1, and will be incorporated herein for all purposes as “Exhibit R.”

3.1.15. Required Checklists and Certifications. “Exhibit S,” attached hereto and incorporated herein.

IV. TERM, SUSPENSION, AND TERMINATION.

4.1. Contract Term. This Contract shall be effective as of the Effective Date and shall terminate on August 31, 2030, unless extended by the parties by amendment to this Contract or terminated earlier, as provided below.

4.2. Suspension of Work.

4.2.1. For Cause. TFC may suspend all or any part of the Work, for cause, without prior notice, as more specifically provided in UGC, Section 14.1.

4.2.2. For Convenience. TFC may suspend all or any part of the Work for the convenience of TFC for a period of up to thirty (30) days, without breach of this Contract, upon seven (7) days written notice, as more specifically provided in UGC, Section 14.2.

4.2.3. Suspension of Work. Upon receipt of a Notice of Suspension pursuant to this Section 4.2, ESCO shall, subject to the provisions of UGC, Sections 14.1 and 14.2, immediately stop all Work.

4.3. Termination.

4.3.1. For Cause. Upon written notice to ESCO and its surety, TFC may, without prejudice to any right or remedy, terminate this Contract and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by ESCO under any of the following circumstances, each one of which shall be considered a material breach of this Contract:

4.3.1.1. Failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials;

4.3.1.2. A violation, whether discovered or asserted before or after the Effective Date, of any Laws and/or Regulations of any Governing Authority;

4.3.1.3. The failure of ESCO to timely deliver the services set out herein or timely complete the Project in accordance with the Contract Documents;

4.3.1.4. Failure to timely remedy defective work;

4.3.1.5. Failure to pay Subcontractors, laborers, and material suppliers pursuant to Texas Government Code, Chapter 2251 (West 2016);

4.3.1.6. Creating endangerment to the safety of employees, Subcontractors, or any other members of the public or of the Work;

4.3.1.7. Failure to timely obtain and deliver, or maintain any required bonds or any required proof of insurance, pursuant to the Contract Documents;

4.3.1.8. The falsity of any material statement, warranty or representation when given or made by ESCO to TFC, whether in this Contract, in ESCO's response to the RFP, or otherwise, or any such statement, warranty or representation becoming materially false at any time during the term of this Contract, or any fraud committed by ESCO or its members, officers, agents, or principals in connection with the procurement of this Contract or the delivery of the Construction Management Services;

4.3.1.9. ESCO (i) makes an assignment for the benefit of creditors; (ii) files a voluntary proceeding seeking protection from creditors under any bankruptcy or other law; (iii) is the subject of an involuntary proceeding under any bankruptcy or other similar law and such proceeding is not dismissed within sixty (60) days; or (iv) makes any admission of its inability to pay its debts generally as they become due;

4.3.1.10. The appointment of a trustee, receiver, or liquidator for ESCO;

4.3.1.11. The use of or otherwise incorporating an item of material or equipment into the Project that is not specified by the Drawings or Specifications, or otherwise approved pursuant to the procedures set out in the Requirements for Substitutions and Equivalents; and

4.3.1.12. Failure to timely comply with any other requirements of the Contract Documents.

4.3.1.13. Upon receipt of a Notice of Termination pursuant to this subsection, ESCO shall immediately stop all Work, and shall continue to cease Work activities, unless and until TFC and ESCO agree on the method and means of satisfying UGC, Subsection 14.3.4.

4.3.2. Termination for Convenience of Owner. TFC may terminate this Contract for any reason and at any time during the performance of the Work as more particularly provided in UGC, Section 14.5. Upon receipt of a Notice of Termination pursuant to this subsection, ESCO shall immediately: (i) stop all Work; and (ii) comply with the provisions of UGC, Subsection 14.5.2.

V. CONSIDERATION.

5.1. Contract Value. The initial value of this contract shall be Two Million One Hundred Fifty-One Thousand Ninety-Four and No/100 Dollars (\$2,151,094.00). Upon approval and execution of a SECO Interagency Agreement, the value of this contract shall consist of three components:

5.1.1. Utility Assessment Report Sum. Utility Assessment Report (“UAR”) for a contract sum of Seventy-Nine Thousand Six Hundred Fifty-Eight and No/100 Dollars (\$79,658.00). TFC is not obligated to compensate ESCO until a SECO Interagency Agreement is awarded and executed.

5.1.2. Scope of Utility Cost Reduction Measures Sum. Scope of Utility Cost Reduction Measures (includes Bonds, Project Management and Training) for a contract sum of Two Million Forty-Three Thousand Three Hundred Eighty-One and No/100 Dollars (\$2,043,381.00).

5.1.3. Construction Period Measurement and Verification Sum. Measurement and Verification for a contract sum of Twenty-Eight Thousand Fifty Five and No/100 Dollars (\$28,055.00). TFC may stop Measurement and Verification payments at any time during the Contract Term.

5.2. Payment of the Contract Sum. The Contract Sum shall be paid in accordance with Article 10 of the UGC, subject to any Supplementary General Conditions or Special Conditions or as provided below.

5.2.1. Initial Pay Application. At least twenty-one (21) days prior to the submission of the initial Pay Application, the Schedule of Values must be submitted and approved by TFC, as per UGC, Subsection 10.1.1. See “Exhibit R.”

5.2.2. Subsequent Pay Applications. In addition to the requirements of UGC, Article 10, each Pay Application must also include the following additional documentation:

5.2.2.1. the Certification Regarding Wage Rate Notification, the form of which is incorporated herein by reference for all purposes as “Exhibit G,” wherein ESCO shall certify that, among other things, it is in full compliance with UGC, Section 2.2, Wage Rates;

5.2.2.2. an updated Work Progress Schedule, including the executive summary and all required schedule reports, including any time Change Orders, as per UGC, Paragraphs 8.3.1.3 and 10.2.1.2;

5.2.2.3. a PAR monthly compliance report, as per UGC, Paragraphs 4.2.5.1 and 10.2.1.3;

5.2.2.4. all test results and reports from all Subcontractors and/or otherwise under ESCO’s possession or subject to ESCO’s control;

5.2.2.5. a duly executed Conditional Waiver and Release on Progress Payment from each Subcontractor that complies with Texas Property Code Section 53.284(b) (West 2014 & Supp. 2015); and

5.2.2.6. any other information or documents as may be requested by TFC.

5.2.3. Payment Application Certifications. Each submission of a Payment Application shall also constitute ESCO's certification that:

5.2.3.1. ESCO has updated all expired insurance policies as required by UGC, Section 5.2;

5.2.3.2. ESCO has updated all the Record Documents, as per UGC, Subsection 6.2.3;

5.2.3.3. ESCO has updated all the Submittal Register, as per UGC, Paragraph 8.3.1.2; and

5.2.3.4. the sums contained in the Payment Application that represent amounts owed to Subcontractors and/or suppliers are, in fact, due and owing to said Subcontractors and/or suppliers, without any deductions or offsets.

5.2.4. Prompt Payment. All payments shall be governed as follows:

5.2.4.1. ESCO shall be paid in accordance with Chapter 2251 of the Texas Government Code (West 2016), also known as the "Prompt Payment Act" and the provisions set out in Article 10 of the UGC, subject to any Special Conditions.

5.2.4.2. For all services rendered, ESCO's payment to Subcontractors is due within ten (10) days after receipt of payment from TFC and, when appropriate, in the sole discretion of TFC, TFC may issue joint checks to ESCO and Subcontractor(s).

5.3. Initial Year. For the initial one (1) year beginning at the Savings Guarantee Commencement Date, TFC shall receive the services as described in the Measurement and Verification Plan, "Exhibit F." Thereafter, the Measurement and Verification will be performed by a third-party engineering firm under contract with TFC.

5.4. Final Payment. Final payment shall not become due until ESCO has delivered to TFC a complete release of all liens arising out of this Contract covering all labor, materials, and equipment for which a lien could be filed, or a bond satisfactory to TFC to indemnify TFC against such lien.

5.5. SECO Funding. The contract sum and any amendments thereto shall be paid for from an approved SECO Interagency Agreement. The agreement to the Consideration for this contract and any adjustments thereto are subject to the review and approval of those amounts to be funded by SECO and/or their third party reviewer. Funding for the ESCO and associated payments shall comply with Tex. Gov't Code §2166.406(f-1).

5.6. Periodic Partial and Final Payment. Periodic partial payments and final payment of this contract sum are subject to the review and approval of SECO or their third party reviewer as they relate to their assessment of the value, stage of completion and efficacy of the energy cost reduction measures as executed by ESCO.

VI. ACKNOWLEDGEMENTS, COVENANTS, AND AGREEMENTS.

6.1. Acknowledgements, Covenants, and Agreements of TFC. TFC acknowledges, covenants, and agrees as follows:

6.1.1. TFC Deliverables to ESCO. TFC shall have provided ESCO with a copy of, or reasonable access to, the following information and documentation regarding the Project:

6.1.1.1. The UGC.

6.1.1.2. Any Supplementary General Conditions.

6.1.1.3. Any Special Conditions.

6.1.1.4. Sample copies of the following:

6.1.1.4.1. bond forms;

6.1.1.4.2. construction payment voucher; and

6.1.1.4.3. time change order form.

6.1.1.5. HUB Subcontracting Plan forms and instructions.

6.1.1.6. Minimum wage rates.

6.1.1.7. The PAR.

6.1.1.8. The communication protocol, which includes the communication and tracking procedure to be utilized for interaction and reporting for the Project.

6.1.2. TFC Services to ESCO. TFC shall timely provide, or cause to be provided, to ESCO the following services for the Project:

6.1.2.1. assuming satisfactory completion of all criminal background checks, assist ESCO in obtaining such access to the Project Site as is reasonably necessary to enable ESCO to provide the construction services;

6.1.2.2. designate the TFC Project Manager who will manage the construction of the Project and the services being provided pursuant to this Contract and the other Contract Documents; and

6.1.2.3. provide intermediate reviews of the work product of ESCO as necessary to allow ESCO to proceed with delivery of the construction services in a timely manner.

6.1.2.4. TFC shall provide ordinary and customary maintenance of TFC's existing equipment and systems that are related to UCRM implemented by ESCO, take reasonable measures to protect and maintain new equipment and systems installed by ESCO and promptly report any known damage or failures of new equipment or systems installed by ESCO to ESCO.

6.1.3. TFC Information. Information under TFC's control shall be furnished by TFC with reasonable promptness as requested by ESCO.

6.1.4. Written Notification. TFC shall notify ESCO in writing of any or all uses or restrictions in usage of all areas of TFC's facility.

6.2. Acknowledgements, Covenants, and Agreements of ESCO. ESCO acknowledges, covenants, and agrees as follows:

6.2.1. Timely Delivery of Conforming Services. ESCO will, subject to Force Majeure events, as defined in Article XII below, timely provide the construction services and construct the Project in conformity with, and as specified in, this Contract, the UGC, the Supplementary General Conditions, any Special Conditions, and the other Construction Documents.

6.2.2. Risk of Loss. Apart from weather delays, errors, omissions or other misrepresentations of the work scope or existing conditions in the construction documents and/or concealed unforeseen conditions, ESCO shall bear all losses, if any, resulting on account of the amount and character of the Work, or because the conditions under which the Work must be done are different from what were estimated or anticipated by ESCO, or because of weather, floods, elements or other causes.

6.2.3. Limitation of Authority. ESCO agrees that the TFC Project Manager shall not have any express or implied authority to vary or otherwise amend the terms and

conditions of this Contract in any way, or waive strict compliance with the terms and conditions of this Contract, any deviation from which must be evidenced by the TFC Project Manager in writing.

6.2.4. ESCO Safety. ESCO and all ESCO Personnel conducting work or Services for TFC shall abide by all OSHA rules and regulations provided by the Department of Labor, OSHA, Code of Federal Regulations, Chapter 29. Employees of ESCO and Subcontractors shall be trained in accordance with Chapter 29, Occupational Safety and Health Regulations. ESCO and Subcontractors shall inform the TFC Project Manager of their Hazardous Electrical Energy Control, Lockout/Tag-out Procedure. ESCO's procedure must meet or exceed TFC's procedure as determined by the TFC Project Manager. Work or services shall not be done on energized electrical circuits, components or equipment. When de-energizing is impractical due to possible harm to personnel, equipment or facility damage, negative onsite or offsite environmental impact, or business interruption, ESCO must follow OSHA requirements as detailed in OSHA Regulations 1910.331 – 1910.399. TFC may at any time; in its sole discretion and in writing, order a temporary stand-down of ESCO's performance of the services ("Safety Stand-Down Order") as a result of any one(1) or more safety incidents, whereupon ESCO shall immediately direct all ESCO Personnel to stop all services while ESCO conducts a comprehensive review of ESCO's safety management plan and any Site conditions affecting safety at any Project Site for the purpose of: (i) identifying any safety hazards and unsafe working conditions; (ii) conducting safety training of the ESCO personnel involved in performance of the services who were or may have been exposed to harm in connection with such safety incident(s); and (iii) taking any corrective action that ESCO determines to be necessary and appropriate to fulfill its obligations in accordance with this Contract. Upon receipt of TFC's Safety Stand-Down Order, ESCO shall not resume performance of the services until it has issued to TFC a written report, which shall be due within forty-eight (48) hours of the receipt of TFC's Safety Stand-Down Order, detailing the course of action that ESCO has taken, or plans to take, to resolve the safety incident(s) described therein, and to prevent the recurrence thereof. After reviewing such course of action with TFC, ESCO shall, in the exercise of the ESCO's reasonable judgment, propose the date by which ESCO will complete all corrective action. Services shall resume only upon TFC's delivery of further written notice to ESCO withdrawing the TFC's Safety Stand-Down Order, which notice of withdrawal shall not be issued until the TFC is reasonably satisfied that ESCO has sufficiently implemented all appropriate corrective action as necessary to enable ESCO to safely resume services, fulfill its contractual obligations set forth in this Contract, and thereby avoid recurrence of the safety incident(s). ESCO shall not be entitled to an adjustment of the ESCO's Compensation, or the Professional Services Schedule, as the result of TFC's issuance of a Safety Stand-Down Order. If ESCO fails to implement the corrective action in the manner proposed by ESCO and determined by TFC to be reasonably acceptable, such failure shall be deemed a material breach of this Contract and TFC may, without further notice, terminate this Contract for cause. In responding to any Safety Stand-Down Order, ESCO's evaluation of the need for, and its plan of, corrective action shall be undertaken as an independent contractor, pursuant to Section 12.3 of this Contract and nothing herein shall be construed or interpreted to mean that TFC has assumed or agreed to assume any duty of care to the ESCO Personnel, or to provide guidance or instruction as to the ESCO's means and methods for managing

safety as required by this Contract. Any action taken by TFC hereunder to enforce TFC's rights to require ESCO to fulfill its safety obligations under this Contract shall be deemed to be undertaken solely for the purpose of fulfilling TFC's contractual expectation of results in terms of delivery of the Projects without causing injury or harm to persons or property.

6.2.5. Cooperation. All Project managers, employees, and associated Subcontractors shall cooperate with and assist each other and all other ESCOs and design professionals retained by TFC.

6.2.6. Cooperation by ESCO.

6.2.6.1. ESCO agrees to conduct all of its services under this Contract by and through appropriate communications with the TFC Project Manager. No work, installation or other services shall be under taken by ESCO except with prior written authorization of the TFC Project Manager.

6.2.6.2. ESCO understands and agrees that work, installation or any other service performed without the prior written authorization of the TFC Project Manager is work outside the scope of this Contract and shall be performed exclusively at ESCO's risk.

6.2.6.3. ESCO agrees to employ competent personnel meeting the requirements set forth herein, who shall be satisfactory to TFC. Personnel assigned to perform Services may not be reassigned without the prior written approval by the TFC Project Manager. TFC may request that ESCO replace unsatisfactory personnel, which request shall not be unreasonably denied.

6.2.6.4. ESCO agrees to cooperate and coordinate its Work and services with that of other members of the Project team. Upon discovery of an apparent conflict in the sequencing of Work or services with another service provider, ESCO shall report the concern to the TFC Project Manager.

6.2.7. Identification of Project Manager and All Subcontractors. The Project Manager identified in the initial List of Project Manager and Subcontractors, incorporated herein by reference for all purposes as "Exhibit H," will supervise the efforts of ESCO to timely provide TFC with the construction services.

6.2.7.1. The Project Manager must be committed to the Project on a full- time basis meaning that it is ESCO's intent that a Project Manager will be assigned to ensure that the work is completed in a timely manner and will work the hours necessary to complete the project. TFC reserves the right to approve the appointment of the Project Manager and to demand that the Project Manager, and any of ESCO's employees or Subcontractors, be removed and replaced if, in the sole opinion of TFC, their performance on this Project or any other Projects, is and/or was not adequate or their continued involvement with the Project will, is, or has become, detrimental to the timely and successful completion of the Project, including but not limited to, for such reasons as: (i) any past or present violation of

any statute, rule, regulation or ordinance of any city, county, the State of Texas, or the United States, or any other Laws and Regulations; (ii) TFC's reasonable belief that failure to obtain an acceptable criminal background check will occur; (iii) prior unsatisfactory performance on other TFC projects; and (v) any other like reasons.

6.2.7.2. The Project Manager and Subcontractors identified in Exhibit L shall not be removed or replaced by ESCO, nor shall any other Subcontractors be engaged by ESCO, unless prior written consent is obtained from TFC, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.2.8. Texas Construction Fund Trust Act. All payments to ESCO shall be subject to the provisions of the Texas Construction Fund Trust Act, Tex. Prop. Code Ann. §162.001, et seq.

6.2.9. Buy Texas and Tier One Products. If ESCO is authorized to make purchases under this Contract, ESCO certifies that ESCO will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Texas Government Code, Chapter 2155. Furthermore, ESCO will use UL listed, LED Products supplied by established and reputable manufacturers with a 10 year or longer proven track records in the USA. ESCO will use products from the attached list, the Tier 1 Product and Manufacturer's List incorporated herein for all purposes as "Exhibit M." In the event that a product, fixture or other equipment needed to complete a section or sections of a the project is not available to be used from "Exhibit M," ESCO must provide TFC a written explanation of why the product, fixture, or equipment is unable to be procured from the vendors listed in "Exhibit M," and ESCO must receive written approval from TFC for the substitute item or items to be used. TFC will provide written approval on substitution requests in a reasonable amount of time and will not unreasonably withhold consent.

6.2.10. No Assumption. No approvals or acceptances by, or on behalf of, TFC shall be deemed to be an assumption of any responsibility by TFC for any defect, error or omission in said Deliverables or Construction Management Services.

6.2.11. Debts or Delinquencies Owed to the State. Any payment due under this Contract may be withheld and applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support pursuant to Texas Government Code, Section 403.055.

6.2.12. General and Criminal Background Checks.

6.2.12.1. ESCO represents and warrants that ESCO and ESCO's employees have not been convicted of a felony criminal offense, or of a crime involving moral turpitude, or that, if such a conviction has occurred, ESCO has fully advised TFC as to the facts and circumstances surrounding the conviction.

6.2.12.2. All of ESCO's employees and Subcontractors that will

perform any work on-site at a state-owned property shall be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by ESCO.

6.2.12.2.1. All criminal background check forms for all of ESCO's employees and Subcontractors that will initially commence any work on-site must be fully completed and submitted to TFC within fifteen (15) days of the date of the appropriate notice of award, and the process thereafter must be diligently pursued by ESCO.

6.2.12.2.2. All criminal background checks must be completed before any employee or Subcontractor performs any services at the Site.

6.2.12.2.3. All criminal background checks must be accomplished by the Texas Department of Public Safety (hereinafter referred to as "DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of ESCO's employees and/or Subcontractors, DPS, or TFC, will adjudicate the results of the criminal background searches in accordance with the criteria set forth in the Exhibit I - Criminal Background Checks and Application Guidelines, attached hereto and incorporated herein for all purposes. ESCO's or Subcontractor's failure to timely secure criminal background check clearance shall not be considered a legitimate delay in the Work Progress Schedule.

6.2.13. Equal Opportunity. ESCO shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, disability, political affiliation, or religious belief. ESCO shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ESCO shall post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination subsection. ESCO shall include the above provisions in all Subcontracts pertaining to Work.

6.2.14. E-Verify. By entering into this Contract, ESCO certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of: (i) all persons employed to perform duties within the State of Texas, during the term of the Contract; and (ii) all persons (including subcontractors) assigned by the ESCO to perform work pursuant to the Contract, within the United States of America. ESCO shall provide, upon request of TFC and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the ESCO, and ESCO's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Contract

may be immediately terminated, at the discretion of TFC, and at no fault to TFC, with no prior notification. ESCO shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Contract. For persons not eligible for E-Verify screening, ESCO (including sub-contractors) shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

6.2.15. No Advertising. ESCO shall not advertise that it is doing business with TFC or use this Contract as any sort of marketing or sales tool without the prior written consent of TFC.

6.2.16. No Warranties by TFC. **ESCO ACKNOWLEDGES THAT ANY AND ALL TESTS, MAPS, REPORTS, AND DRAWINGS IN THE POSSESSION OF TFC THAT REFLECT OR DEPICT SITE BOUNDARIES, RECORDED EASEMENTS, TOPOGRAPHY, AND UTILITY LOCATIONS WERE PREPARED SOLELY FOR TFC'S BENEFIT AND FOR INFORMATION ONLY PURPOSES, AND THAT ESCO SHALL HAVE NO RIGHT TO RELY UPON SUCH AND THAT ANY RELIANCE THEREON SHALL BE AT ESCO'S OWN RISK.**

6.2.17. Encountering Different Conditions. Apart from weather delays, errors, omissions or other misrepresentations of the work scope or existing conditions in the construction documents and/or concealed unforeseen conditions, ESCO agrees that it shall make no claims for damages, additional compensation or extension of time against TFC because of encountering actual conditions in the course of the Work which vary or differ from conditions or information contained in the Contract Documents.

6.2.18. Sequencing of Construction. TFC reserves the right to: (i) direct the Construction Phase to commence prior to completion of the Pre-Construction Phase, in which case the phases will proceed concurrently; or (ii) to complete the Project in phases.

6.2.19. Warranties and Guarantees. All warranties and guarantees required by the Specifications shall expressly run to the benefit of TFC. If required by TFC, ESCO shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. In addition to any warranties in this contract, ESCO warrants that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by ESCO or any of ESCO's subcontractors or supplier at any tier. The warranty shall be for the period of 2 years. ESCO's warranty with respect to work repaired or replaced will run for 2 years from the date of repair or replace. The Owner shall notify ESCO, in writing, within a reasonable time after the discovery of any failure, defect, or damage. If ESCO fails to remedy any failure, defect or damage within a reasonable time after receipt of notice, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at ESCO's expense.

6.2.20. Unless otherwise provided in the Contract Documents, ESCO shall secure and pay for the building permit and other permits, licenses and inspections necessary for

proper execution and completion of the Work.

6.2.21. ESCO shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work.

6.2.22. ESCO shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, ESCO shall remove from and about Project waste materials, rubbish, ESCO'S tools, equipment, machinery and surplus material.

6.2.23. ESCO shall provide Owner access to the Work in preparation and progress wherever located.

6.2.24. ESCO shall pay all royalties and license fees, shall defend suits or claims for infringement or patent rights, and shall hold Owner harmless from loss on account thereof.

6.2.25. Subcontracts:

6.2.25.1. A Subcontractor is a person or entity who has a direct contract with ESCO to perform a portion of the Work at the site.

6.2.25.2. Unless otherwise stated in the Contract Documents or the bidding requirements ESCO, if requested in writing by Owner, shall furnish in writing to Owner the names of the Subcontractors to whom ESCO plans to award Work. Contracts between ESCO and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to ESCO by the terms of the Contract Documents, and to assume all the obligations and responsibilities which ESCO, by the Contract Documents, assumes toward TFC, and (2) allow to the Subcontractor the benefit of all rights, remedies and redress afforded to ESCO by these Contract Documents.

6.2.26. Entities that Boycott Israel. Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Contract. Contractor shall state any facts that make it exempt from the boycott certification in its Response.

6.2.27. Prohibition Against Contracting with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations. In accordance with Section 2251.152 of the Texas Government Code, TFC is prohibited from entering into a governmental contract (as defined in Texas Government Code Section 2252.151(3)) with a company that is identified on a list prepared and maintained under Texas Government Code Section 806.051, 807.051, or 2252.153. If contractor is on the above-referenced list the Contract will be considered void or voidable and TFC will not be responsible to pay Contractor for any work performed.

VII. WARRANTIES AND REPRESENTATION BY ESCO.

7.1. Warranties and Representations by ESCO. ESCO hereby makes the following warranties, representations and certifications, all of which are true, accurate and complete at the time of the Effective Date and throughout the term of the Contract, and which shall be true, accurate and complete with respect to each Deliverable. All representations and warranties discussed below shall survive the expiration or termination of this Contract.

7.1.1. Compliance with All Laws. ESCO shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by ESCO to provide the goods or services required by this Contract. ESCO agrees to be responsible for payment of any such government obligation not paid by its Subcontractors during the performance of this contract. ESCO agrees to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. As part of its delivery of the Construction Management Services, and apart from responsibility for the compliance of the design with all applicable codes and regulations, ESCO shall make itself familiar with and at all times give all notices required by, and shall observe and comply with, all Laws and Regulations of all Governmental Authorities that in any manner affect performance under this Contract.

7.1.1.1. Neither ESCO, nor any firm, corporation, partnership, or institution represented by ESCO, or anyone acting for them has: (i) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15 or the Federal antitrust laws; or (ii) communicated directly or indirectly its response to the Request for Proposals for this Project to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

7.1.1.2. TFC reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary to address TFC's or ESCO's required compliance with all Laws and Regulations. The parties shall mutually agree to reasonable adjustments to the Contract Sum and to the Contract Time with respect to any such modifications.

7.1.1.3. ESCO has determined what licenses, patents and permits are required under the Contract and will have acquired all such licenses, patents and permits prior to commencement of construction.

7.1.1.4. Neither ESCO nor any firm, corporation, partnership, or institution represented by ESCO, or anyone acting for such firm, corporation or institution has: (i) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15 or the Federal antitrust laws; or (ii) communicated directly or indirectly its response to the RFP to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

7.1.2. Responses to RFQ. All statements, representations and certifications contained in, or otherwise set out in, ESCO's response(s) to the RFQ for this Project were true and correct when made, and shall remain true and correct throughout the term of this Contract.

7.1.3. Immigration Reform. The Immigration Reform and Control Act of 1986, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors and Subcontractors who contract with the State. ESCO shall not place any employee of ESCO at a worksite, nor shall ESCO permit any employee, nor any Subcontractor, to perform any work on behalf of, or for the benefit of, TFC without first confirming said employee's authorization to lawfully work in the United States. ESCO warrants that ESCO: (i) maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with applicable law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to ESCO's senior management; and (iv) is without knowledge of any fact that would render any employee or Subcontractor ineligible to legally work in the United States. ESCO further acknowledges, agrees, and warrants that Contractor: (i) has complied, and shall at all times during the term of the Contract comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Contract properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement ("DHS-ICE"), including, without limitation, the completion and maintenance of the Form I-9 for each of ESCO's employees; and (iii) has responded, and shall at all times during the term of the Contract respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Contract, ESCO shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by TFC or any state agency of ESCO or any of its employees. ESCO acknowledges, agrees and warrants that all Subcontractors permitted by it to perform work will be required to agree to these same terms as a condition to being awarded a Subcontract for such work.

7.1.4. Proficiency in Systems. ESCO is proficient in the use of CAD systems and EPMCS utilized by TFC.

7.1.5. Warranty of Deliverables. All Deliverables shall be: (i) completed and delivered in a timely manner and in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; (ii) conform to or exceed the specifications set forth in the Contract Documents; and (iii) be fit for ordinary use, of good quality, and with no material defects. ESCO Warrants that all equipment installed as a part of this agreement is new, will be materially free from defects in materials and workmanship, will be installed properly in good

workmanlike manner and will function properly. ESCO further warrants that equipment will be installed properly so that all manufacturer's warranties will be valid after ESCO completes the scope of their work under the contract. ESCO shall notify TFC whenever defects in equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by ESCO.

7.1.5.1. Where a Shop Drawing or Sample is required by the Contract Documents or the Submittal Register, any related Work performed prior to TFC's review and approval of the pertinent submittal will be at the sole expense and responsibility of ESCO.

7.1.5.2. Any provisions in the UGC to the contrary notwithstanding, including, but not necessarily limited to Section 13.2, the creation of ESCO's general two (2) year warranty shall not be construed to constitute a waiver of ESCO's obligation to correct, or otherwise be responsible for, any latent defects beyond the above-mentioned two (2) year corrective period.

7.1.5.3. Any provision in the UGC to the contrary notwithstanding, no warranty periods shall commence unless and until a Certificate of Substantial Completion has been issued for the corresponding Work or portion thereof.

7.1.6. Warranty of Improvements. Any provisions herein to the contrary notwithstanding, ESCO expressly warrants that all improvements, including workmanship and materials incorporated into the Project, shall be free from defects.

7.1.7. Eligibility.

7.1.7.1. Eligibility. The individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate pursuant to Texas Government Code, Section 2155.004(b).

7.1.7.2. Disaster Relief Contract Violation. Under Sections 2155.006 and 2261.053 of the Texas Government Code, ESCO certifies that the individual or business entity named in the response or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

7.1.7.3. Excluded Parties. ESCO certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

7.1.7.4. Suspension and Debarment. ESCO certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas

Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

7.1.7.5. No Conflicts. ESCO represents and warrants that ESCO has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that ESCO's provision of services under this Contract would not reasonably create an appearance of impropriety.

7.1.8. Family Code Disclosure of Ownership. Pursuant to the requirements of the Texas Family Code, Section 231.006, regarding delinquent child support, the individual or business entity named in this Contract is not ineligible to receive payment under this Contract and, if applicable, ESCO has provided, prior to its execution of this Contract, the name and social security number of each such person (sole proprietors, firm owners, partners, or shareholders) holding at least twenty-five percent (25%) ownership of the business entity entering into this Contract. ESCO acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

7.1.9. Deceptive Trade Practices Act; Unfair Business Practices Disclosures. ESCO represents and warrants that it has not been found liable of Deceptive Trade Practices Act violations under Chapter 17 of the Texas Business and Commerce Code or of any unfair business practice in any administrative hearing or court suit. ESCO further certifies that it has no officers who have served as officers of other entities who have been found liable of Deceptive Trade Practices violations or of any unfair business practices in an administrative hearing or court suit. In the event that allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code or of any unfair business practices against either ESCO or any of ESCO's officers have occurred or are currently pending in an administrative proceeding or in a lawsuit filed with any court, then ESCO has disclosed all such matters to TFC and provided a brief description of each allegation, information regarding the administrative body or court before which the matter is pending, and the current status of the matter.

7.1.10. Disclosure of Former State Executives. Pursuant to Texas Government Code, Section 669.003 relating to contracting with an executive of a state agency, no Person who, in the past four (4) years served as an executive of TFC or any other state agency was involved with or has any interest in this Contract or any Contract resulting from this Contract. If ESCO employs or has used the services of a former executive head of TFC or any other state agency, then ESCO has provided the name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with ESCO, and the date of employment with ESCO.

7.1.11. Certification Concerning Restricted Employment for Former State Officers or Employees Under Government Code § 572.069. ESCO certifies that it has not employed and will not employ a former TFC or state officer who participated in a procurement or contract negotiation for TFC involving ESCO within two (2) years after the state officer or employee left state agency employment or service. This certification only

applies to former state officers or employees whose service or employment ceased on or after September 1, 2015.

7.1.12. Financial Interests/Gifts. Neither ESCO nor any of its principals, officers, directors, employees, other agents, or relatives within the second degree of consanguinity or affinity have given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract pursuant to Texas Government Code, Sections 572.051, 2255.001 and Texas Penal Code, Section 36.09.

7.1.13. Prior Employment. ESCO knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in ESCO's firm or corporation. ESCO further certifies that no partner, corporation, or unincorporated association that employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which ESCO will be dealing on behalf of TFC pursuant to Texas Government Code, Chapter 573 and Section 2254.032. Furthermore, ESCO certifies and agrees that if it employs any former employee of TFC, such employee will perform no work in connection with this Contract during the twelve (12) month period immediately following the employee's last date of employment at TFC.

7.1.14. Affirmation as to Submittals. Upon submittal to TFC of any documentation or data that was created or modified by ESCO, including but not limited to Drawings, Specifications, and the Budget, all representations contained therein shall be true and accurate as to each such creation or modification.

7.1.15. Drawings and Specifications. ESCO is required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but ESCO shall promptly report to TFC, in writing, any nonconformity discovered by or made known to ESCO in the form of an RFI.

7.1.16. Site Inspection. Subject to the provisions set forth below, ESCO has had an opportunity to examine, and prior to the submission of its GMP Proposal will have carefully examined, all of the Contract Documents including, but not limited to, the Drawings and the Specifications, and has fully acquainted itself with the scope of Work, design, availability of materials, existing facilities, the general topography, soil structure, substructure conditions, obstructions, and all other conditions pertaining to the Work, the site of the Work and its surrounding; that it has made all investigations essential to a full understanding of the difficulties which may be encountered in performing the Work; and that anything in any of the Contract Documents or in any representations, statements or information made or furnished by TFC or its representatives notwithstanding, ESCO will regardless of any such conditions pertaining to the Work, the site of the Work or its surroundings, complete the Work for the compensation stated in this Contract, and pursuant to the extent of ESCO's liability under this Contract, assume full and

complete responsibility for any such conditions pertaining to the Work, the site of the Work or its surroundings, and all risks in connection therewith.

7.1.16.1. As part of its examination of the Site conditions, ESCO has made and/or will make, reasonable and appropriate efforts to discover the presence of any subsurface or otherwise concealed Hazardous Materials. The scope of said examination must include a reasonable amount of invasive and/or destructive exploration behind walls and ceilings. The results thereof shall be delivered to TFC in writing at or prior to the delivery of the GMP Proposal.

7.1.16.2. In the event ESCO discovers the presence of other Hazardous Materials during the Construction Phase of the Project, ESCO shall promptly, but in no event later than seven (7) days after each such discovery, provide written notice thereof to TFC and A/E. ESCO shall not disturb said conditions.

7.1.16.3. Any remediation of such Hazardous Materials shall be considered outside the scope of Work.

VIII. STATE FUNDING.

8.1. State Funding. This Contract shall not be construed as creating any debt on behalf of the State of Texas 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. Furthermore, any damages due under this Contract should not exceed the amount of funds appropriated for payment under this Contract, but not yet paid to ESCO, for the fiscal year Budget in existence at the time of the breach.

IX. COPYRIGHTS AND TRADEMARKS.

9.1. Copyrights. ESCO agrees that all Deliverables provided pursuant to this Contract are subject to the rights of TFC in effect on the date of execution of this Contract. These rights include the right to use, duplicate and disclose such subject matter and data, in whole or in part, in any manner for alterations, additions, remodels or maintenance; and to have others do so including production of Deliverables in response to a public information request pursuant to Texas Government Code, Chapter 552. If the Deliverables produced by ESCO are subject to copyright protection, ESCO hereby grants to TFC a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such and to authorize others to do so. ESCO shall include appropriate provisions to achieve the purpose of this condition in all Subcontracts entered into that produce information subject to copyright protection.

9.1.1. Disclaimers. All such Deliverables furnished by ESCO pursuant to this Contract shall be considered instruments of its services in respect to the Project. It is

understood that ESCO does not represent such Deliverables to be suitable for reuse on any other study or for any other purpose(s). If TFC verifies or adapts ESCO's Deliverables for TFC's use on another study, ESCO shall be compensated for redesign or new design, bidding, and construction administration services.

9.1.2. Delivery to TFC. ESCO shall promptly provide copies of the Deliverables to TFC upon completion, termination, or cancellation of this Contract for any reason, including all copies of the Deliverables in any form or medium specified by TFC in this Contract, whether written, digital, or electronic.

9.1.3. TFC Right to Use. Any provision herein to the contrary notwithstanding, TFC shall be authorized to make subsequent use of the Deliverables for any and all future renovations, modifications, alterations, maintenance, repairs, and the like of the Project.

9.2. No Use of Name or Trademark. ESCO agrees not to make any written use of or reference to TFC's name or registered or unregistered trademarks for any marketing, public relations, advertising, display or other business purpose or make any use of TFC's facilities for any activity related to the express business purposes and interests of TFC pursuant to this Contract, without the prior written consent of TFC, which consent may be withheld or granted in TFC's sole discretion.

X. RECORDS, AUDIT, PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE.

10.1. Books and Records. ESCO shall keep and maintain under generally accepted accounting principles full, true and complete records, as are necessary to fully disclose to TFC or the United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal regulations and statutes.

10.2. Inspections and Audits. ESCO agrees that all relevant records related to this Contract or any work product under this Contract, including practices of its Subcontractors, shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of ESCO where such records may be found, with or without notice by the Texas State Auditor's Office ("SAO"), the contracting agency or its contracted examiners, or the Office of the Texas Attorney General, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All Subcontracts shall reflect the requirements of this section. In addition, pursuant to Texas Government Code, Section 2262.003, the SAO may conduct an audit or investigation of any entity receiving funds under this Contract, including direct payments to ESCO and indirect payments under a Subcontract to this Contract; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation. ESCO will

fully disclose all costs of materials and labor purchased and subcontracted and a list of hourly rates and position descriptions for labor or services provided by ESCO upon TFC's request. ESCO will maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. ESCO will afford TFC access to these records. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices.

10.3. Records Retention. All records relevant to this Contract shall be retained for a minimum of life-of-loan plus seven (7) years. This retention period runs from the date of payment for the relevant goods or services by TFC, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation which may ensue.

10.4. Confidentiality Provisions Applicable to ESCO.

10.4.1. Protection of Confidential Information. ESCO hereby acknowledges, understands and agrees: (i) that in the course of conducting its due diligence regarding the provision of Construction Management Services to TFC, certain Confidential Information (as defined below) will be disclosed to ESCO; and (ii) that whether developed by TFC or others employed by or associated with TFC, all Confidential Information is, and shall remain, the exclusive and confidential property of TFC, and shall be at all times regarded, treated and protected as such by ESCO in accordance with this Contract. Failure to mark any information "Confidential" shall not affect the confidential nature of such information.

10.4.2. Definition of Confidential Information. "Confidential Information" shall mean all information, whether or not originated by TFC, which is used in, or a part of, TFC's business and operations and is: (i) proprietary to, about, or created by TFC; (ii) gives TFC some competitive advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of TFC; (iii) designated as "Confidential Information" by TFC, or from all the relevant circumstances should reasonably be assumed by ESCO to be confidential and proprietary to TFC; or (iv) not generally known by ESCO. Such Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing or designated as confidential):

10.4.2.1. work product resulting from, or related to, work, projects, or services performed or to be performed by TFC for ESCO and/or for actual and potential Using Agencies that are related to the business and/or operations of TFC, including but not limited to, methods, processes, procedures, analysis, techniques, and audits used in connection therewith;

10.4.2.2. computer software of any type or form in any stage of actual or anticipated research and development, including, but not limited to, programs and program modules, routines and subroutines, processes, algorithms, design concepts, design

specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches, and system designs;

10.4.2.3. information relating to TFC's proprietary rights prior to any public disclosure thereof, including but not limited to, the nature of the proprietary rights, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets);

10.4.2.4. internal personnel and financial information, vendor names and other vendor information (including vendor characteristics, services, and agreements), customer lists and contacts, business plan(s), purchasing and internal cost information, internal services and operational manuals, pricing, marketing, and all other manner and methods of conducting TFC's business;

10.4.2.5. marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of TFC which have been or are being discussed;

10.4.2.6. any information obtained from TFC regarding its pursuit or negotiation of agreements with any potential "Contracting Person" regarding a potential "Qualifying Project" as those terms are defined in Chapter 2267 of the Texas Government Code, including, but not necessarily limited to, the names of the Contracting Person, including their representatives, (collectively, "Business Customers"); the parties to and substance of any agreements between TFC and said Business Customers; services and data provided, or to be provided, by or to said Business Customers; and the type, quantity and specifications of products and services purchased, leased, licensed or received, or to be purchased, leased, licensed or received, by Business Customers; and

10.4.3. Exclusions. "Confidential Information" shall not include information that: (i) is or becomes available to the public generally, other than as a result of disclosure by ESCO in breach of the terms of this Contract; (ii) becomes available to ESCO from a source (other than TFC) which source is not, to the best of ESCO's knowledge, subject to any legally binding obligation to keep the same confidential; or (iii) has been independently acquired or developed by ESCO.

10.4.4. Covenants. As a consequence of ESCO's acquisition or anticipated acquisition of Confidential Information, ESCO will occupy a position of trust and confidence to TFC with respect to TFC's affairs and business. In view of the foregoing and of the mutual consideration to be provided to each party, ESCO agrees that it is reasonable and necessary that it make the following covenants:

10.4.4.1. No Disclosure. Both during and forever after the performance of its due diligence investigation, ESCO will not disclose Confidential Information to any Person or entity other than as necessary in carrying out its duties on behalf of TFC and/or due diligence investigation, without first obtaining TFC's prior, written consent, and ESCO will take all reasonable precautions to prevent inadvertent disclosure of such Confidential Information. This prohibition against ESCO's disclosure of Confidential Information includes, but is not limited to, disclosing the fact that any similarity exists between the Confidential Information and information independently developed by another Person or entity, and ESCO understands that such similarity does not excuse ESCO from abiding by its covenant or other obligations pursuant to this Contract.

10.4.4.2. No Use, Copying, or Transfer. Both during and after the conduct of its due diligence investigation, ESCO will not use, copy, or transfer Confidential Information other than as necessary in carrying out its duties on behalf of TFC and/or due diligence investigation, without first obtaining prior written consent of TFC, and will take all reasonable precautions to prevent inadvertent use, copying, or transfer of such Confidential Information. This prohibition against ESCO's use, copying, or transfer of Confidential Information includes, but is not limited to, selling, licensing or otherwise exploiting, directly or indirectly, any products or services (including software in any form) that embody or are derived from Confidential Information.

10.4.4.3. No Use of Name or Trademark. ESCO agrees not to make any written use of or reference to TFC's name or registered or unregistered trademarks (or any names under which TFC conducts business or operations) for any marketing, public relations, advertising, display or other business purpose or make any use of TFC's facilities for any activity related to the express business purposes and interests of TFC pursuant to this Contract, without the prior written consent of TFC, which consent may be withheld or granted in TFC's sole and absolute discretion.

10.4.4.4. Non-Circumvention. ESCO agrees not to utilize, either directly or indirectly, any Confidential Information in order to facilitate or create direct business relationships with Business Customers of TFC.

10.5. Confidentiality Provisions Applicable to TFC. Subject to the provisions of Section 10.6 below, TFC shall keep confidential all information, in whatever form, produced, prepared, or observed by ESCO to the extent that such information is: (i) confidential by law; (ii) marked or designated "confidential," or words to that effect, in a font size no smaller than 14 point, by ESCO; or (iii) information that TFC is otherwise required to keep confidential by this Contract.

10.6. Public Records. Notwithstanding any provisions of this Contract to the contrary, ESCO understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. If contacted by TFC, ESCO will cooperate with TFC in the production of documents responsive to the request. ESCO agrees to provide the

documents responsive to the request in the format specified by TFC. ESCO may request that TFC seek an opinion from the Attorney General of the State of Texas. However, TFC will not honor ESCO's request for an opinion if the request is not based upon a reasonable interpretation of the Texas Public Information Act. Additionally, ESCO will notify TFC's General Counsel within twenty-four (24) hours of receipt of any third-party requests for information that was provided by the State of Texas for use in performing the Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. ESCO agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, ESCO is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

10.7. Electronic and Information Resources Accessibility Standards, as required by Title 1 of the Texas Administrative Code, Chapter 213. Effective September 1, 2006, all state agencies and institutions of higher education shall procure products which comply with the State of Texas accessibility requirements for electronic and information resources specified in Title 1 of the Texas Administrative Code, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. If applicable, ESCO shall provide the Texas Department of Information Resources ("DIR") with the universal resource locator ("URL") to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<https://app.buyaccessible.gov/baw/Main.jsp>). Vendors and service providers not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

XI. BONDS AND INSURANCE.

11.1. Bonds. For all phases of the Project, ESCO shall timely obtain and deliver to TFC the bonds required by Section 5.1 of the UGC for each such phase, provided however, the provisions of Paragraph 5.1.3.1 of the UGC to the contrary notwithstanding, ESCO shall have obtained and delivered the Bid Bond contemporaneously with submission of ESCO's response to an RFP or other TFC solicitation process.

11.2. Insurance Requirements. ESCO shall timely obtain and maintain insurance in the following types and amounts for the duration of this Contract (unless specifically provided otherwise herein), and must timely comply with the following additional insurance requirements:

11.2.1. Amounts and Types of Insurance Coverages. The amounts and types of required insurance coverages are as follows:

11.2.1.1. Workers' Compensation and Employers' Liability Coverage. ESCO hereby certifies, pursuant to Texas Labor Code, Section 406.096(a), that ESCO provides or will provide at, or prior to, execution of the Guaranteed Maximum Price Amendment, Workers' Compensation and Employers' Liability insurance for employees employed on this public project with limits of not less than: (i) \$1,000,000 each accident; (ii) \$1,000,000 disease each employee; and (iii) \$1,000,000 disease policy limit.

11.2.1.1.1. Coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(44).

11.2.1.1.2. As per Tex. Lab. Code §406.096(b), ESCO shall require each Subcontractor to certify in writing to ESCO that said Subcontractor provides workers' compensation and employers' liability insurance for all of Subcontractor's employees employed on this public project. In keeping with Sections 5.2.8 and 5.2.9 of "Exhibit A," the 2015 Uniform General Conditions, Owner is entitled, upon request and without expense, to receive copies of Subcontractor's written certifications.

11.2.1.1.3. The policy must include Other States Endorsement to include the State of Texas if ESCO's business is domiciled outside the State of Texas.

11.2.1.2. Commercial General Liability. Commercial general liability insurance coverage including premises; operations; blanket contractual liability coverage assumed under the Contract and all contracts relative to the Project, including independent ESCO's liability pursuant to unamended ISO (also known as "Insurance Services Office, Inc."), or its equivalent; products and completed operations; and extended to include explosion, collapse, and underground hazards, with a combined single limit of \$1,000,000 per occurrence and a general aggregate of \$2,000,000.

11.2.1.2.1. The general aggregate shall apply on a per Project basis.

11.2.1.3. Business Automobile Liability Insurance. Business automobile liability coverage for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$1,000,000 bodily injury per person, \$1,000,000 bodily injury per occurrence, and at least \$1,000,000 property damage liability per accident.

11.2.1.3.1. No aggregate shall be permitted.

11.2.1.3.2. Such insurance must include coverage for

loading and unloading hazards.

11.2.1.4. All-Risk Builder's Risk Insurance. ESCO shall obtain and maintain All-Risk Builder's Risk Insurance, or all-risk installation floater for those instances in which the Project involves solely the installation of material and/or equipment.

11.2.1.4.1. Coverage shall be all-risk, including, but not limited to, fire, extended coverage, vandalism and malicious mischief, theft and, if applicable, flood, earth movement and named storm.

11.2.1.4.2. Builder's risk and installation floater limits shall be equal to one hundred percent (100%) of the Contract Sum.

11.2.1.4.3. For renovation projects or projects that involve portions of Work contained within an existing structure, the policy must also include coverage in the additional sum of \$1,000,000. Existing Property and TFC-furnished equipment, if any, specified by TFC.

11.2.1.4.3.1. For purposes herein, "Existing Property" means existing buildings or structures, as well as, all personal property contained therein. "Existing Property" does not include personal property owned or operated by ESCO or any Subcontractors.

11.2.1.4.4. For TFC furnished equipment or materials that will be in care, custody or control of ESCO, ESCO shall be responsible for any and all damages and losses thereto.

11.2.1.4.5. The policy must be written jointly in the names of TFC and ESCO. Subcontractors must be named as additional insureds.

11.2.1.4.6. The policy shall have endorsements as follows:

11.2.1.4.6.1. this insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property;

11.2.1.4.6.2. this insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion; and

11.2.1.4.6.3. loss, if any, shall be adjusted with and made payable to TFC as trustee for the insureds as their interests may appear. TFC shall be named as loss payee.

11.2.1.4.6.4. Valuation of any loss for the renovation and any existing property (exclusive of building and existing structures) shall be at replacement cost.

11.2.1.4.7. Policy shall remain in effect until Substantial Completion is achieved as to all phases of the Project.

11.2.1.5. Umbrella Liability Insurance. Umbrella liability insurance for a period not to expire or terminate prior to the expiration of all warranty periods, insuring ESCO for an amount of not less than One Million and No/100 Dollars (\$1,000,000.00), which provides coverage at least as broad as, and applies in excess and follows form of, the primary liability coverages required hereinabove. The policy shall provide “drop down” coverage where underlying primary insurance coverage limits are exhausted or otherwise unavailable or inadequate to cover a loss.

11.2.1.6. Professional Liability Insurance shall be provided by ESCO to cover the professional liability arising out of or in connection with any negligent act, error or omission of all ESCO Personnel, including all design professionals and any non-professional ESCO Personnel, and all members of any sub consultant firm or any joint venture or other firm of the ESCO acting for, in combination with, on behalf of, or under the direction or control of the ESCO in the performance of any Services required under this Agreement, or arising from or in connection with the coordination, management or oversight of such ESCO Personnel. This policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (i) bodily injury or property damage where coverage is provided on behalf of design professionals or subcontractors; (ii) habitational or residential operations; (iii) pollution, mold and/or microbial matter and/or fungus and/or biological substance; (iv) punitive, exemplary or multiplied damages; (v) contractual liability caused by, related to, or arising from a wrongful act of the ESCO or ESCO Personnel in the performance of professional services (or any limitation or exclusion that restricts coverage to only liability that would exist in the absence of contract); or (vi) design/build services.

Professional Liability Insurance \$1,000,000.00 Occurrence/\$1,000,000.00
Aggregate

11.2.2. General Requirements for All Insurance. The following provisions shall apply to all insurance requirements:

11.2.2.1. Deductibles and Self-Insured Retentions. ESCO shall be responsible for all deductibles and self-insured retentions, if any, stated in policies. All deductibles and self-insured retentions shall be disclosed on the certificates of insurance.

11.2.2.2. Occurrence Policies. Unless specifically provided otherwise herein, all policies must be written on an occurrence basis.

11.2.2.3. Claims-Made Policies. If coverage is underwritten on a claims- made basis, the retroactive date for the policy and all renewals shall be coincident with

the Effective Date of this Contract and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. Any premiums for this extended reporting period shall be paid by ESCO.

11.2.2.4. Additional Policy Requirements. In the event the primary insurance policy does not so provide, ESCO shall obtain and maintain endorsements as to each deficient policy, or provide such other document(s) as may be approved in advance by TFC, that satisfy all of the following requirements:

11.2.2.4.1. naming “**Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711, its officials, directors, employees, representatives, and volunteers,**” as additional insureds, provided however, this requirement does not apply to workers’ compensation insurance;

11.2.2.4.2. the policy, or such other document(s) as may be acceptable to TFC, must obligate the insurer, or a third-party acceptable to TFC, notify the Texas Facilities Commission, Attention: Insurance Specialist, P.O. Box 13047, Austin, Texas 78711, or by email at Insurance@TFC.state.tx.us, of any: (i) non-renewal; (ii) cancellations; or (iii) material changes, in writing, as soon as is reasonably possible prior to any such non-renewal, cancellation or change;

11.2.2.4.2.1. “Material Change” means any of the following changes to the policy during the term of the Policy:

11.2.2.4.2.1.1. a change in the policy period;

11.2.2.4.2.1.2. a material revision to, or removal of, a coverage section;

11.2.2.4.2.1.3. a reduction of the amount of limits of insurance, provided such reduction is not the result of payment of damages, medical expenses, or claim expenses; or

11.2.2.4.2.1.4. an increase of the amount of any self- insured retentions; and

11.2.2.4.3. as to those policies wherein TFC is an additional insured, said insurance coverages must be primary and non-contributing with respect to insurance or self-insurance carried by TFC, if any; and

11.2.2.4.4. the policy must provide a waiver of subrogation rights to TFC for the workers’ compensation, employers’ liability, commercial general liability, and business automobile liability policies.

11.2.2.5. No Commencement of Work. ESCO shall not, nor allow any Subcontractor(s) to commence Work until the proof of satisfaction of the insurance requirements has been received and approved by TFC. However, any approval of the insurance requirements by TFC shall not relieve or reduce the liability of ESCO hereunder.

11.2.2.6. Qualifications of Insurer. All insurance must be written by a company licensed to do business in the State of Texas at the time the policy and any renewals are issued, and must be written by a company with an A.M. Best rating of A- or better.

11.2.3. No Cancellation or Lapse. ESCO shall not cause or permit any required insurance to cancel or lapse prior to the expiration of all warranty periods, provided however, policy duration for builder's risk (or as applicable, an installation floater) is not governed by this provision.

11.2.4. Notice of Erosion. ESCO shall provide TFC thirty (30) days written notice of erosion of any aggregate limits below the minimum amounts required by the Contract.

11.2.5. Right to Review. TFC reserves the right to review the insurance requirements of Article XII during the effective period of the Contract and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions or the claims history of the industry and/or of ESCO, provided however, such modifications must be commercially available to ESCO. TFC shall make an equitable adjustment to the Contract Sum for any additional cost resulting therefrom.

11.2.6. Losses Paid by ESCO. Actual losses not covered by insurance as required by this Contract shall be paid by ESCO.

11.2.7. Failure to Obtain or Maintain. Failure to timely obtain and maintain the insurance coverages as required under this Contract may subject ESCO to, among other remedies, the following:

11.2.7.1. disqualification from eligibility to participate in any other or future projects with TFC;

11.2.7.2. suspension of Work for cause pursuant to UGC, Article 14;

11.2.7.3. in the event ESCO fails to timely renew or pay any of the renewal premiums for any expiring policies, TFC shall have the right (but not the obligation) to: (i) make such payments; and/or (ii) acquire replacement coverage, and set off the amount(s) or costs thereof against the next payment(s) coming due to ESCO under the Contract or under any other contract between TFC and ESCO; and/or

11.2.7.4. TFC may withhold of any payments due to ESCO from this

Project or any other TFC project until satisfaction is achieved.

11.2.8. TFC a Third-Party Beneficiary. It is hereby acknowledged and agreed that TFC is a third-party beneficiary of any agreement(s) between ESCO and any and all Persons who procure, or cause to be procured, the above-described insurance coverages, and all renewals thereof, for the Project.

XII. MISCELLANEOUS.

12.1. Indemnification.

12.1.1. ACTS OR OMISSIONS. ESCO SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF ESCO OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY ESCO WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND ESCO MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. ESCO AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

12.1.2. INFRINGEMENTS. ESCO SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF ESCO PURSUANT TO THIS AGREEMENT. ESCO AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. ESCO SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY ESCO WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND ESCO MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. ESCO SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (i) USE OF THE PRODUCT OR SERVICE FOR A

PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (ii) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT ESCO'S WRITTEN APPROVAL, (iii) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE ESCO PURSUANT TO TFC'S SPECIFIC INSTRUCTIONS, (iv) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TFC, OR (v) ANY USE OF THE PRODUCT OR SERVICE BY TFC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT. IF ESCO BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES ESCO WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, ESCO MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT ESCO'S SOLE OPTION AND EXPENSE; (i) PROCURE FOR TFC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (ii) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TFC'S USE IS NON-INFRINGEMENT.

12.1.3. TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY. ESCO AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, ESCO SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF ESCO'S AND ESCO'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. ESCO AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE SHALL NOT BE LIABLE TO THE ESCO, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. ESCO AGREES TO INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS AGREEMENT. ESCO SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY ESCO WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND ESCO MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. ESCO AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

12.1.4. Notice to TFC. In the event ESCO becomes aware of any claim that may

be subject to the above-described indemnification, ESCO shall notify TFC of such claim within five (5) business days of becoming aware.

12.1.5. Settlement Authority. No settlement of any such claim shall be made by ESCO without TFC's prior written approval.

12.2. Historically Underutilized Businesses ("HUBs"). In accordance with state law, it is TFC's policy to assist HUBs, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting Subcontractors to assist in fulfilling ESCO's obligations with TFC. If ESCO subcontracts with others for some or all of the services to be performed under this Contract, ESCO shall comply with all HUB requirements pursuant to Chapter 2161 of the Texas Government Code. Exhibit J - Initial Approved HUB Subcontracting Plan ("HSP") is attached hereto and incorporated herein for all purposes. When required, ESCO shall submit an updated HSP. Upon TFC approval of HSP update(s), such update(s) shall become, without further notice or action, a part of the incorporated "Exhibit J." The HSP form is incorporated herein for all purposes as "Exhibit K." Upon execution of a GMP Amendment Acceptance, an updated HSP must be approved. ESCO shall provide the HUB program of TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the HSP Progress Assessment Reporting ("PAR") Form, attached hereto and incorporated herein for all purposes as "Exhibit L."

12.3. Requirement to Utilize HUB Compliance Reporting System. Pursuant to Texas Administrative Code, Title 34 §§ 20.85(f)(1)(2) and 20.287(b), TFC administers monthly HUB Subcontracting Plan ("HSP") to include the Progressive Assessment Report ("PAR") compliance monitoring through a HUB Compliance Reporting System known as B2G. ESCO and ESCO's Subcontractors must submit required PAR information into the B2G system as a condition of payment. Any delay in the timely submission of PAR information into the B2G system will be treated as a deficiency and the payment request will be subject to suspension until such deficiency has been resolved.

12.4. Relationship of the Parties. ESCO is associated with TFC only for the purposes and to the extent specified in this Contract, and with respect to performance of the contracted services pursuant to this Contract, ESCO is and shall be an independent ESCO. Subject only to the terms of this Contract, ESCO shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. TFC has no right or obligation to control the methods and means of performing the Work except as to the obligation to ensure compliance with the Contract Documents. The divisions and sections of the Specifications and the identifications of any Drawings shall not control ESCO in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of ESCO or any other party. ESCO shall be solely responsible for, and TFC shall have no obligation with respect to the following:

- 12.4.1. withholding of income taxes, FICA, or any other taxes or fees;
- 12.4.2. industrial or workers' compensation insurance coverage;
- 12.4.3. participation in any group insurance plans available to employees of the State of Texas;
- 12.4.4. participation or contributions by the State to the State Employees Retirement System;
- 12.4.5. accumulation of vacation leave or sick leave; or
- 12.4.6. unemployment compensation coverage provided by the State.

12.5. No Assignment & Subcontracts. ESCO shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Contract without the prior written consent of TFC. Notwithstanding the foregoing, it is mutually understood and agreed that ESCO may subcontract with third parties for some or all of the Construction Management Services to be performed. In any approved Subcontracts, ESCO shall legally bind such Subcontractor to perform and make such Subcontractor subject to all the duties, requirements, and obligations of ESCO specified herein. Nothing herein shall be construed to relieve ESCO of the responsibility for ensuring that the goods delivered and/or the services rendered by ESCO and/or any of its Subcontractors comply with all the terms and provisions of this Contract. ESCO will provide written notification to TFC of any such Subcontractor performing work under this Contract, including the name and taxpayer identification number of Subcontractor, the task(s) being performed, and the number of Subcontractor employees expected to work on the task.

12.6. Drug Free Work Place. ESCO, ESCO's employees and Subcontractors shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law No. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and ESCO, ESCO's employees, and Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

12.7. No Smoking. All facilities where work is to be performed are nonsmoking buildings. ESCO's employees and Subcontractors are prohibited from smoking in all areas except in areas designed for smoking.

12.8. Notices. All notices, demands and requests required in this Contract shall be in writing and shall be deemed to have been properly delivered and received: (i) three (3) business days

after deposit in a regularly maintained receptacle for the United States mail, certified mail, return receipt requested and postage prepaid; or (ii) one (1) business day after deposit with Federal Express or comparable overnight delivery system for overnight delivery with all costs prepaid. All notices, demands and requests hereunder shall be addressed as follows:

If to TFC: Texas Facilities Commission
Attention: Legal Services Division
1711 San Jacinto Blvd., Suite 400
Austin, Texas 78701

If to ESCO: E3 Entegral Solutions, Inc.
Attention: Doug Kirkley, Vice President of Business Development
2040 Highland Village Road, Suite 100
Highland Village, Texas 75077
Phone: (972) 325-1919
E-Mail: dkirkley@e3es.com

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

12.9. Name and Organizational Changes. (1) ESCO must provide TFC with written notification of all name changes and organizational changes relating to the ESCO including, but not limited to, merger, acquisition, or sale, no later than ten (10) business days of such change. ESCO, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Contract. If the change entails personnel changes for personnel performing the responsibility of the Contract for ESCO, ESCO shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Contract and ESCO shall supply the requested information within five (5) working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of ESCO or successor entity, as applicable, to maintain its status as a party to this Contract.

12.9.1. Termination Due to Material Change. TFC may terminate this Contract due to any change to ESCO that materially alters ESCO's ability to perform under the Contract.

12.10. Governing Law and Venue. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought pursuant to this Contract shall be in a court of competent jurisdiction in Travis County, Texas. ESCO hereby irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of, or responding to, any action or proceeding in such jurisdiction with respect to this Contract or any document related hereto.

12.11. Proper Authority. The parties hereto represent and warrant that the Person executing this Contract on behalf of each party has full power and authority to enter into this Contract. ESCO acknowledges that this Contract is effective for the period of time specified in the Contract. Any services performed by ESCO before this Contract is effective or after it ceases to be effective are performed at the sole risk of ESCO.

12.12. Force Majeure. Any delays in or failure of performance by either party, except in respect of the obligation for payments under this Contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused solely by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such Party is unable to prevent (hereinafter referred to as "Force Majeure") including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods, earthquakes, hurricanes, or any other natural disaster or governmental actions.

12.12.1. In any such event, the party claiming Force Majeure shall notify the other party of the Force Majeure event in writing within forty-eight (48) hours of the commencement of the Force Majeure event, and within forty-eight (48) hours of the termination of the Force Majeure event. In the event said party fails to timely provide either of the above-described notices, such failure shall constitute, without further notice or action, a waiver of the right to claim Force Majeure for such event.

12.12.2. If possible, the notice shall set forth the extent and duration thereof.

12.12.3. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if nonperformance continues for more than thirty (30) days, TFC may terminate this Contract immediately upon written notification to ESCO. Changes in the schedule or in the design or scope of the Project as a result of any Force Majeure which affect the cost of ESCO's services under this Contract require a written amendment to this Contract.

12.13. Dispute Resolution. Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by the parties to attempt to resolve all disputes arising under this Contract. In accordance with Texas Civil Practice & Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice & Remedies Code, Section 114.002 shall be governed by the following dispute resolution process:

12.1.1. Claims for Breach of Contract and Counterclaims.

12.13.1.1. ESCO may make a claim against TFC for breach of a contract between TFC and ESCO. TFC may assert a counterclaim against ESCO.

12.13.1.2. ESCO must provide written notice to TFC of a claim for breach of contract not later than one hundred eighty (180) days after the date of the event giving rise to the claim.

12.13.1.3. The notice must state with particularity:

12.13.1.3.1. the nature of the alleged breach;

12.13.1.3.2. the amount ESCO seeks as damages; and

12.13.1.3.3. the legal theory of recovery.

12.13.1.4. TFC must assert, in a writing delivered to ESCO, any counterclaim not later than the 60th day after the date of notice of a claim under Section 12.13.1.2.

12.13.1.5. Damages.

12.13.1.5.1. The total amount of money recoverable on a claim for breach of contract under this Section 12.13 may not, after deducting the amount specified in Section 12.13.5.2 below, exceed an amount equal to the sum of:

12.13.1.5.1.1. the balance due and owing
on the contract price;

12.13.1.5.1.2. the amount or fair market
value of orders or requests for additional work made by a unit of state government to the
extent that the orders or requests for additional work were actually performed; and

12.13.1.5.1.3. any delay or labor-related
expense incurred by ESCO as a result of an action of or a failure to act by the unit of state
government or a party acting under the supervision or control of the unit of state government.

12.13.1.5.2. Any amount owed the unit of state
government for work not performed under a contract or in substantial compliance with its
terms shall be deducted from the amount in Section 12.13.1.5.1.

12.13.1.5.3. Any award of damages under this Contract
may not include:

12.13.1.5.3.1. consequential or similar
damages, except delays or labor-related expenses described by Section 12.13.1.5.1.3;

12.13.1.5.3.2. exemplary damages;

unjust enrichment theory;

12.13.1.5.3.3. any damages based on an

12.13.1.5.3.4. attorney's fees; or

12.13.1.5.3.5. home office overhead.

12.13.2. Negotiation.

12.13.2.1. TFC's General Counsel shall examine the claim and any counterclaim and negotiate ESCO in an effort to resolve them. The negotiation must begin no later than one hundred twenty (120) days after the date the claim is received.

12.13.2.2. TFC's administrative rules located at Title 1, Part 5, Section 111.31 of the Texas Administrative Code apply to this Contract and govern the negotiation of any dispute arising from this Contract.

12.13.2.3. In the event negotiation results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the settlement to writing, and each party shall sign the settlement. A partial settlement or resolution of a claim does not waive a party's rights as to the parts of the claim that are not resolved.

12.13.3. Mediation.

12.13.3.1. Before the one hundred twentieth (120th) day after the date the claim is filed with TFC and before the expiration of any extension of time mutually agreed upon, the parties may agree to mediate a claim made under this Contract.

12.13.3.2. TFC's administrative rules located at Title 1, Part 5, Section 111.31 of the Texas Administrative Code apply to this Contract and govern the mediation of any dispute arising from this Contract.

12.13.4. Adjudication.

12.13.4.1. On or after the two hundred seventieth (270th) day following the date the claim is filed with TFC, unless the parties agree in writing to an extension of time, ESCO may adjudicate any claim in accordance with and to the extent permitted under Texas Civil Practice and Remedies Code, Chapter 114 or Texas Government Code, Chapter 2260.

12.13.5. Payment of Claims.

12.13.5.1. In accordance with Texas Civil Practice and Remedies Code, Section 114.011, TFC may pay a claim resolved under this Section 12.12 only from money appropriated to it for payment of contract claims or for payment of the contract that is the

subject of the claim. If money previously appropriated for payment of contract claims or payment of the contract is insufficient to pay the claim or settlement, the balance of the claim may be paid only from money appropriated by the legislature for payment of the claim.

12.13.5.2. Chapter 304 of the Texas Finance Code applies to a judgment awarded to a claimant except that the applicable rate of interest may not exceed six (6) percent.

12.13.5.3. Consistent with Section 114.011, property owned by the state or any unit of state government is not subject to seizure, attachment, garnishment, or any other creditors' remedy to satisfy a judgment on a breach of contract claim.

12.13.6. Representation of TFC. The attorney general shall defend TFC in any proceeding or adjudication conducted in conjunction with a claim brought under this Section 12.13.

12.14. Legal Construction and Severability. In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision herein, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision there shall be substituted a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

12.15. Multiple Counterparts. This Contract may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.

12.16. Binding Effect. This Contract shall be binding upon and shall inure to the benefit of the parties hereto, their representatives, successors and assigns.

12.17. Limitation on Authority and No Other Obligations. ESCO shall have no authority to act for or on behalf of TFC or the State of Texas except as expressly provided for in this Contract; no other authority, power, or use is granted or implied. ESCO may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of TFC or the State of Texas.

12.18. No Waiver of Sovereign Immunity. Nothing in the Contract shall be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas, TFC or the Using Agency. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

12.19. No Implied Waiver. The failure of a party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in this Contract shall not be construed as a waiver or a relinquishment thereof for the future.

12.20. No Third-Party Beneficiaries. This Contract is made solely and specifically among and for the benefit of the parties named herein and the Using Agency, and their respective successors and assigns, and no other Person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of this Contract as a third-party beneficiary or otherwise.

12.21. Further Assurances. ESCO shall take such actions and execute such other and additional documents as are reasonably necessary or desirable in order to carry out the purposes and intent of this Contract.

12.22. No Presumptions for Ambiguities. Each party hereby represents and warrants that although the initial draft of this Contract may have been prepared by one party, both parties have been given the opportunity to review this Contract with counsel of their choice, and have made additions, revisions, and amendments hereto. Therefore, each party hereby covenants and agrees that they are co-drafters of this Contract such that any ambiguities cannot be construed against any party.

12.23. Time is of the Essence. Time is of the essence with respect to this Contract; *provided however*, in the event that any of the deadlines set forth herein end on a Saturday, Sunday, or federal legal holiday, such deadline shall automatically be extended to the next day which is not a Saturday, Sunday, or federal legal holiday.

12.24. Work Made for Hire. All Work shall constitute the exclusive property of TFC. All right, title and interest in and to said Work shall automatically and without further notice or action vest in TFC upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such Work may not, by operation of law, vest in TFC, or such Work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably and unconditionally assigned to TFC. TFC shall also have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. ESCO must give TFC and/or the State of Texas, as well as any person designated by TFC and/or the State of Texas, all assistance reasonably necessary to effectuate the intent of this section and to perfect the rights and interests defined herein without any charge or expense to TFC beyond those amounts payable to ESCO for the services rendered under this Contract.

12.25. False Statements; Breach of Representations. By signature to this ESCO, ESCO makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If ESCO signs this Contract with a false statement or it is subsequently determined that ESCO has violated any of the representations, warranties, guarantees, certifications or

affirmations included in this Contract, ESCO shall be in default under this Contract, and TFC may terminate or void this Contract for cause and pursue other remedies available to TFC under this Contract and applicable law.

12.26. Abandonment and Default. If ESCO defaults on this Contract, TFC reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible respondent. The defaulting ESCO will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work.

12.27. Antitrust and Assignment of Claims. ESCO represents and warrants that neither ESCO nor any firm, corporation, partnership, or institution represented by ESCO, or anyone acting for such firm, corporation or institution has (i) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (ii) communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract. ESCO assigns to the State of Texas all of ESCO's rights, title, and interest in and to all claims and causes of action ESCO may have under the antitrust laws of Texas or the United States for overcharges associated with the Contract.

12.28. Schedule of Exhibits. The following shall be the exhibits to this Contract and are hereby incorporated herein by reference:

12.28.1.	<u>Exhibit A.</u>	2015 Uniform General Conditions.
12.28.2.	<u>Exhibit B.</u>	2018 Supplementary General Conditions.
12.28.3.	<u>Exhibit C.</u>	Sample Periodic Savings Report.
12.28.4.	<u>Exhibit D.</u>	Performance Guarantee Agreement.
12.28.5.	<u>Exhibit E.</u>	Utility Assessment Report.
12.28.6.	Exhibit F.	Measurement and Verification Plan.
12.28.7.	<u>Exhibit G.</u>	Certification Regarding Wage Rate Notifications [Form].
12.28.8.	<u>Exhibit H.</u>	List of Project Manager.
12.28.9.	<u>Exhibit I.</u>	Criminal Background Checks and Application Guidelines.
12.28.10.	<u>Exhibit J.</u>	Initial Approved HUB Subcontracting Plan.
12.28.11.	Exhibit K.	HUB Subcontracting Plan FORM.
12.28.12.	<u>Exhibit L.</u>	HUB Subcontracting Plan Progress Assessment Report [FORM].

12.28.13. Exhibit M. Tier 1 Product and Manufacturer's List (To be delivered by ESCO, approved by TFC and incorporated herein).

12.28.14. Exhibit N. Payment and Performance Bond [FORMS].

12.28.15. Exhibit O. ESCO Response to RFQ No. 303-8-01186.

12.28.16. Exhibit P. Improvement List.

12.28.17. Exhibit Q. Specifications or Drawings prepared by ESCO, and any addenda issued with any request for proposal ("RFP") issued to subcontractors (To be submitted by ESCO, approved by TFC, and incorporated herein.)

12.28.18. Exhibit R. Schedule of Values. To be submitted by ESCO and approved by TFC, as per UGC, Subsection 10.1.1.

12.28.19. Exhibit S. Required Checklists and Certifications.

12.29. Survival of Terms. Termination of the Agreement for any reason shall not release ESCO from any liability or obligation set forth in the Agreement that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution and invoice and verification.

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12.30. Entire Agreement and Modification. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistently with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension, or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto. **THERE ARE NO OTHER ORAL OR WRITTEN AGREEMENTS BETWEEN THE PARTIES HERETO OR OTHER THIRD PARTY RELATING TO THE SUBJECT TRANSACTION.**

TEXAS FACILITIES COMMISSION

E3 ENTEGRAL SOLUTIONS, INC.

By: 

By: 

Mike Novak

Doug Kirkley

Executive Director

Vice President of Business Development

Date of Execution: 3-17-2020

Date of Execution: 3/17/2020

GC 

DED 