

Interlocal Contract

**Texas A&M Engineering Experiment
Station**

This Interlocal Contract (the "Agreement") is made by and between the Texas Facilities Commission, an agency of the State of Texas located at 1711 San Jacinto Boulevard, Austin, Texas 78701 ("Customer") and the Texas A&M Engineering Experiment Station ("TEES"), an agency of the State of Texas and member of the Texas A&M University System, collectively referred to as the "Parties", (or each Party).

Recitals

Whereas, Customer desires to enter into an Interlocal Agreement with TEES to perform energy management-related engineering and technology-oriented services, including but not limited to project commissioning services; and

Whereas, TEES is the primary agent for engineering research within the Texas A&M University System Engineering Program, a partnership of state agencies and universities committed to technology-related education, engineering research and outreach; and

Whereas, TEES utilizes staff, researchers and students to develop and transfer its expertise to public and private sectors through technical service; and

Whereas the Interlocal Cooperation Act, Texas Government Code Section 791.001, *et. seq.*, provides authorization for any local government to contract with one another and with agencies of the state to perform governmental functions and services under the terms of the Act;

NOW, THEREFORE, in consideration of the mutual promises, terms and provisions contained herein, Customer and TEES agree as follows:

1. **SCOPE OF SERVICES:**
 - 1.1 TEES agrees to perform various energy management-related engineering services subject to the terms and conditions hereof.
 - 1.2 Energy management-related engineering services, which may include, but are not limited to, the following:
 - a. Assist Customer with identifying and/or analyzing potential Measures which may reduce Customer's energy costs and/or emissions (environmental) footprint;

- b. Provide expertise in assisting with and/or performing the commissioning of various energy conservation measures or projects;
 - c. Perform other energy management-related engineering services, technical assistance, and training as requested by Customer and agreed to by TEES.
- 1.3 Performance of services under this Agreement shall be initiated by a written task order (Exhibit A) signed by Customer's designated representative and TEES' designated representative. The task order shall identify the subject Facilities, the Services to be performed, the payment terms, and other terms and conditions mutually acceptable to the parties.
- 1.4 Nothing in this Agreement shall require Customer to award a task order for services from TEES, or require TEES to accept any task order submitted by Customer, but this Agreement shall govern the terms and conditions under which TEES provides Service to Customer, unless modified for specific task orders.
2. **OBLIGATIONS OF THE PARTIES**
- 2.1 Customer will identify the Measures or Projects to be considered by TEES for its energy management related engineering services.
- 2.2 Upon mutual agreement of the parties, Customer will issue task orders to TEES to initiate Services to be performed by TEES under this Agreement. Task orders will be executed by both parties.
- 2.3 Customer shall furnish, or arrange to be furnished to TEES, available information pertinent to the scope of services. Customer understands that TEES will rely on the information provided in performing its services.
- 2.4 TEES will have access to Customer Facilities, during hours mutually agreed to by the Parties following timely notification to Customer, for the purpose of implementing this Agreement, and all task orders entered into hereunder. Customer shall be responsible for arranging access to its Customer's Facilities and notifying TEES of all liability issues associated with third party involvement.
- 2.5 Customer will pay, when due, all compensation due TEES in accordance with the terms of the task orders.
- 2.6 Customer shall comply with any obligations and responsibilities defined for specific Facilities as set forth in the applicable task order.

3. PRICE

- 3.1 This indefinite services contract shall be issued in an amount not to exceed Thirty One Thousand Two Hundred Fifty Six and No/100 Dollars (\$31,256.00). All services shall be issued by individual task orders for work described in the Scope of Services above and in the Orders. TEES shall complete all work and services under this Contract within the time period specified in the individual task orders.

4. PROPOSALS FOR TASK ORDERS

- 4.1 Whenever Customer requests TEES to submit a quotation for services either the Customer's Asset Management Division Technical Representative or the Supply Chain Management Contract Administrator shall provide to TEES preliminary criteria together with the desired schedule for completion of the work and specified payment method.
- 4.2 TEES shall submit to the Supply Chain Management Contract Administrator, within the time specified, a proposal per the specified payment method.
- 4.3 The Assistant Director, Supply Chain Management, or designee shall issue a Task Order setting forth requirements and pricing terms agreed to.

5. PROSECUTION OF THE WORK

- 5.1 Upon issuance of the Notice to Proceed, TEES shall promptly commence the work specified in the Task Order and shall diligently prosecute the work to completion within the time period. TEES shall not commence work until the Task Order and Notice to Proceed have been issued, unless directed in writing by the Assistant Director of Supply Chain Management.

6. INVOICING AND PAYMENT

- 6.1 TEES shall invoice monthly in accordance with the compensation terms agreed to by the parties in respective task orders entered into hereunder. TEES may issue separate invoices for each task order. Unless otherwise specified in an agreed task order, payments hereunder shall be due within thirty (30) days after receipt of invoice.
- 6.2 Customer will make payment to TEES from current revenues pursuant to Government Code Section 791.011(d)(3).

7. TERM

- 7.1 This Agreement shall be effective as of the date of execution by the last party to sign (the "Effective Date") and shall remain in force through August 31, 2019 unless extended by the parties by amendment to this Agreement or terminated by either TEES or Customer. Subject to the terms and conditions of any future task orders, either party may terminate this Agreement upon 60 days written notice to the other party. Any task orders still in effect at the time of such termination shall survive and continue in full force and effect in accordance with their terms. Upon termination, TEES shall be reimbursed for all costs and non-cancelable commitments made through the date of termination.
- 7.2 TEES may terminate this agreement prior to the 60 day notice required specified in Article 7.1 if Customer fails to pay TEES as required under the task orders.

8. LIMITATION OF LIABILITY

- 8.1 TEES makes no representations and extends no warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, nor does TEES assume any obligations with respect to infringement of any patent rights relating to the information delivered and/or the activities under this agreement.

9. NOTICE

- 9.1 Notices to either party shall be in writing.

The address for Customer for all purposes shall be:

Texas Facilities Commission
Attention: Legal Services
1711 San Jacinto Boulevard, Suite 400
Austin, Texas 78701

With a copy to:

Texas Facilities Commission
Attention: John S. Raff, Deputy Executive Director
1711 San Jacinto Boulevard, Suite 400
Austin, Texas 78701

- 9.2 The address of the TEES for all purposes shall

be: Sponsored Research Services

400 Harvey Mitchell Parkway South, Suite 300
College Station, TX 77845-4357
Attn: Ashlee Woolard
Phone: (979) 845-0707 E-Mail: awoolard@tamu.edu

10. MISCELLANEOUS

- 10.1 Severability. If any section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of the Agreement shall not be affected hereby. It is the intent of the parties signing this Agreement that no portion of it, or provision of regulation contained in it, shall become inoperative or fail by reason of the invalidity of any other subsection, sentence, clause, phrase, provision, or regulation of this Agreement.
- 10.2 Independent Contractor. For the purposes of this Agreement and all services to be provided hereunder, the parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other party. Neither party shall have the authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other party, except as may be explicitly provided for herein or authorized in writing.
- 10.3 Law and Venue. This Agreement, and all disputes arising hereunder, shall be governed by the laws of the State of Texas, without regard to conflict of laws or principles. Without waiving any defense to or immunity from suit or liability, venue for a suit brought against TEES must be brought in Brazos County pursuant to Texas Education Code Section 85.18. Venue for a suit brought against Customer shall be in a court of competent jurisdiction in Travis County.
- 10.4 Dispute Resolution. Customer and TEES shall attempt to resolve all disputes by good faith negotiations. If, after good faith negotiations, any dispute shall remain between the parties, the parties agree to submit the matter to mediation before a mutually-agreed upon mediator and to diligently pursue a mediated settlement until such time as the parties agree to terminate such mediation or the mediator declares an impasse. No lawsuit may be filed until mediation of the issue has ended in accordance with the terms hereof. TEES hereby consents to and stipulates to the personal jurisdiction and venue of the appropriate courts of the State of Texas in any litigation brought under this Article.

Notwithstanding any dispute or litigation between TEES and Customer, TEES shall proceed diligently with the performance of the Work required by the Contract as directed by Customer.

- 10.5 Alteration, Amendment or Modification. This Agreement may not be altered, amended, or modified except in writing, signed by both parties.
- 10.6 Entire Agreement. This Agreement and its exhibits, and any task orders entered into under this Agreement constitute the entire agreement between Customer and TEES. No other agreement, statement or promise relating to the subject matter of this Agreement, which is not contained in this Agreement, is valid or binding.
- 10.7 As required by law, the party or parties paying for the performance of governmental functions or services shall make payments therefore from current revenues available to the paying party.
- 10.8 Customer Right to Inspect and Audit.
- 10.8.1 The Contractor (and Contractor's suppliers, vendors, subcontractors, insurance agents and other agents) shall maintain and Customer shall have the right to examine records, documents, books, accounting procedures and practice and any other supporting evidence deemed necessary by Customer to substantiate compliance with the terms of this Contract, including Task Orders and Change Orders. Such right of examinations shall include reasonable access to and cooperation by all Contractor personnel who have worked on or have knowledge related to the performance of this Contract. Proprietary/Trade Secret information pertaining to this Contract may not be withheld from Customer or its Authorized Representative.
- 10.8.2 The Contractor's, subcontractors' and related agent and vendor organization's documents, records and other evidence shall be subject to inspection and/or reproduction by Customer, its agents and Authorized Representatives. The Contractor shall provide Customer with retrievals of computer-based records or transactions that Customer determines to be necessary to conduct the audit. There shall be no charge to Customer for reasonable use of the Contractor's photocopy machine while conducting the audit, nor any cost of retrieving, downloading to diskette, and/or printing any records or transactions stored in magnetic, optical, microfilm, or other media. The Contractor shall provide all records and retrieval requested with seven (7) calendar days.
- 10.8.3 The documents, etc. described above shall be made available at the office of the Contractor at all reasonable times, for inspection, audit, and reproduction, until the expiration of seven (7) years from the date of the Customer's final acceptance of the Work. Records, which relate to appeals or litigation or settlement or claims arising out of the performance of this Contract shall be made available for a period of three (3) years from the date of the final disposition of such appeals, litigation, or claims. The Contractor shall provide adequate and appropriate workspace to conduct all inspections, audits and

reviews. Customer shall provide the Contractor with reasonable advance notice of intended audit, inspections and reviews.

10.8.4 The Contractor shall insert an item containing all these Audit provisions, including this paragraph, in all subcontracts hereunder except altered as necessary for the proper identification of the contracting parties and Customer under this Contract. Failure to insert these Audit provisions in all subcontracts hereunder shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Contract.

10.9 Historically Underutilized Businesses ("HUBs") and Disadvantaged, Minority and/or Women-Owned Business Enterprises (DMWBE)

10.9.1 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. Customer 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 obligations with TFC. If TEES subcontracts with others for some or all of the services to be performed under this Agreement, TEES shall comply with all HUB requirements pursuant to Chapter 2161 of the Texas Government Code.

10.10 Insurance Provisions.

The Customer recognizes that the Texas A&M University System and its specific agency Texas A&M Engineering Experiment Station (TEES), is permitted by Texas Statutes to self-insure for workers compensation liability and automobile liability; and enjoys general liability protection afforded by Texas Tort Claims Act, however commercial subconsultants engaged by TEES on this Contract must meet the following insurance provisions.

10.10.1 Definitions For Insurance Provisions:

- "We", "us", or "our" means the Customer
- "You" or "your" means the vendor, contractor, tenant, consultant, engineer, architect, and their agents, servants, employees, or other party to a contract with us.
- "Contract" means the contract, purchase order, Invitation for Bid, or similar memorandum or agreement.

- For purpose of defining Additional Insured and Waiver of Subrogation, the term "Customer" shall also mean the elected officials, boards, officers, employees, agents and representatives of Customer.

a. General Requirements:

- You shall, at your own expense, maintain in effect not less than the following coverages and limits of insurance, which you shall maintain with insurers, policy forms and deductibles satisfactory to us. If your coverage fails to comply with these requirements, you agree to amend, supplement or endorse the existing coverage to comply, at no additional cost to us, and to maintain such insurance through the end of the contract, warranty period, or other specified time period, whichever is longer. ANY deviation from the requirements outlined below requires the prior written approval of the Customer's Assistant Vice President for Supply Chain Management.
- All policies must be written through a licensed company authorized by the Texas State Board of Insurance to transact that class of insurance business in the State of Texas, with a minimum rating of "A-", and "VII" by A.M. Best Company. If the rating of any insurer should fall below this standard, you shall cause the policy to be replaced promptly by an acceptable insurer.
- All policies, except policies for workers' compensation, professional liability and pollution liability, shall designate the below mentioned parties as "Additional insureds", either by a "blanket additional insured" endorsement or by specific endorsement:

Customer

- All policies shall waive the insurer's right of recovery or subrogation against Customer.
- If any policy is in excess of a deductible or self-insured retention (SIR), the amount of such deductible or SIR must be clearly identified, and may not exceed one (1%) percent of your net worth. We reserve the right to reject any deductible or SIR, or require you to provide a bond at no additional cost to Customer.
- All policies must be primary with respect to coverage provided for Customer.

- All policies must be non-contributory with other coverage or self-insurance available to Customer.

b. Required Coverage and Limits:

- Workers' Compensation: Statutory Coverage
- Employer's Liability Insurance: \$500,000 Each Accident
\$500,000 Each Disease, Each Employee
\$500,000 Each Disease Policy Limit
- All employees, leased or co-employees, independent contractors, and employees of subcontractors and vendors, occupants of the building as tenants, sub-tenants or sub sub-tenants, performing work for Customer, or entering upon Customer premises, must be covered by Workers Compensation.
- If Contractor is a sole proprietorship without employees and which will not be using any subcontractor(s) in the performance of the Contract Work, it may substitute the following for workers compensation insurance: The Contractor must provide Customer with proof of medical insurance cover the sole proprietor and, as sole proprietor, must sign and provide to Customer a Hold Harmless and Indemnification Agreement.
- Commercial General Liability (CGL)

Limit Any One Occurrence:	\$1,000,000
Damage To Rented Premises:	\$100,000
Personal And Advertising Injury:	\$1,000,000
Policy Aggregate (per location or per project):	\$2,000,000
Products and Completed Operations Aggregate:	\$2,000,000
- CGL coverage applies unless you provide only trucking, (no premises or operations other than driving, loading/unloading), or garage operations.
- All liability policies, except Pollution & Professional, must be written on an "Occurrence Form". Neither "Modified Occurrence" nor "Claims-Made" policies are acceptable, and the Contractor will be contractual default if your insurance is "Modified Occurrence" or "Claims Made". If the Pollution or Professional Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of the Contractor's first professional service to Customer, your first exposure to pollutants, or first work that may give rise to a pollution liability claim, related to our contract.
- Aggregate limits of all Liability policies shall be "per project" or "per location", as appropriate. If any aggregate limit is reduced by 25% or more by

reserved and/or paid claims, the contractor must notify Customer and promptly reinstate the required aggregates.

- All Liability policies must provide unlimited defense costs in excess of policy limits.
- All liability policies shall name Customer and the City as "Additional Insureds", including coverage for Products/Completed Operations.
- All liability shall include Broad Form Contractual Liability covering the indemnification provisions of our contract.
- All liability policies shall cover loss caused by the contractor's subcontractors, independent contractors, suppliers or other parties providing goods or services in connection without contract.
- All liability policies must contain a "severability of interests" provision.
- All liability policies must cover cross-suites between insureds.
- If the contractor's operations involve excavation, grading, filling, backfilling, road or similar construction, no Liability policy may contain exclusions for subsidence or earth movement.
- If the contractor's operations involve any construction, no liability policy shall contain exclusions for hazards of explosion ("X"), collapse ("C") or underground ("U").
- If the contractor's operations involve any construction, reconstruction, repair or similar work, no liability policy may contain any exclusion for such work.
- Business Automobile Liability
Combined Single Event for Each Accident: \$500,000
- Coverage must apply to all vehicles (owned, non-owned, or hired) operating on our site/location, or transporting people or property off of our site, except vehicles operated by you or your employee(s) commuting in personal vehicles to our parking facilities, in which case you must only carry Employer's Non-Ownership coverage, (same limit), and ensure that such vehicle(s) are personally insured.

- Auto pollution liability coverage is required on vehicles hauling hazardous cargo.
- If your operations are solely a garage (vehicle maintenance and repair), you must carry Garage Liability, instead of Business Auto Liability, but the Garage Liability must not be limited to auto liability only, and the same limit applies.

c. Additional Coverage and Limits:

- Excess / Umbrella Liability (as applicable)

Air Operations Area (within air operations area):	\$10,000,000
Landside Operations (outside air operations area):	\$ 5,000,000

- Coverage must apply in excess of all required primary Liability insurance, and must be at least as broad as the underlying Liability insurance.
- This coverage limit may be satisfied by adding the amounts of CGL and Excess/Umbrella Liability to arrive at a total of \$5,000,000 / \$10,000,000. The same would be applicable for Business Auto Liability and Excess/Umbrella liability to arrive at a total of \$5,000,000 / \$10,000,000.
- Professional Liability Insurance: \$1,000,000
- Your policy must cover the type of professional service you will provide in fulfilling your contract with Customer.
- If the Professional Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of the contractor's first professional service to Customer.
- Pollution Liability Insurance: Not Applicable
- If you have any exposure to asbestos, lead, mold (including any work which could, if not performed properly, lead to mold or fungal contamination), petroleum products, contaminated soils, or other pollutants, you shall provide appropriate Pollution Liability or Environmental Impairment insurance.
- If the Pollution Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of the contractor's first exposure to pollutants, or first work that may give rise to a pollution liability claim, related to our contract.

d. **Additional Requirements:**

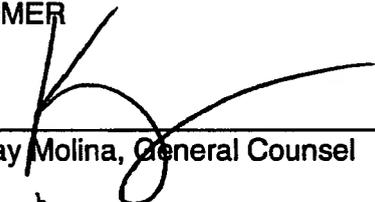
- If you are a crane/rigging operator or will hoist or move property of others in connection with our contract, you must have "care, custody & control" exclusion deleted from your Commercial General Liability policy, or provide Rigger's Liability coverage at least equal to the highest replacement cost of materials to be hoisted or moved.
- If your vehicles carry materials belonging to others in connection with our contract, you must carry Cargo Liability coverage, at least equal to the highest value of property to be carried on a single vehicle, with terminal coverage at least equal to the highest value of property at one terminal, owned or controlled by you.
- If you will store, warehouse, or otherwise have custody of property belonging to others in connection with our contract, you must have Warehousemen's Liability, Bailee's Customers' Goods, Garage-Keepers Legal Liability or equivalent coverage at least equal to the highest value of property in your custody.
- If our contract calls for you to construct a structure, you must purchase and maintain "All-Risk" Builders Risk insurance for the full completed value of the structure and contents, including all changes and sufficient limit to fund full and immediate reconstruction under adverse conditions. This policy shall cover our interests as Loss Payee, so any loss will be adjusted with and made payable to us as trustee for all insureds as their interest may appear.
- If you transport materials, equipment, machinery or furnishings to, or store such property on, our construction site, you must carry and "All-Risk" Installation Floater with coverage at least equal to the greatest concentration of value (including the cost of transit, installation labor and testing).
- If you use rented equipment or tools on our job site or premises, you must carry Rented Equipment coverage sufficient to repair or replace damaged equipment.
- If you sell or serve alcohol or alcoholic beverages, you must carry \$3,000,000 Liquor Legal Liability, not limited to "host liquor" coverage.
- Should this Contract require the use of Subcontractors, it will be the sole responsibility of the Texas A&M University System and its specific agency Texas Engineering and Experiment Station (TEES) to either require Subcontractors to provide and maintain the insurance limits and coverages required herein.

- The General Contractor shall verify that such Subcontractors are in compliance with all contractual insurance requirements.
- The General Contractor shall assume all liability for those Subcontractors who do not meet the insurance requirements.

10.11 **Force Majeure.** If either party fails to fulfill its obligations hereunder (other than an obligation for the payment of money), when such failure is due to an act of God, or other circumstance beyond its reasonable control, including but not limited to fire, flood, civil commotion, riot, war (declared and undeclared), revolution, acts of foreign or domestic terrorism, or embargos, then said failure shall be excused for the duration of such event and for such a time thereafter as is reasonable to enable the parties to resume performance under this Agreement, provided however, that in no event shall such time extend for a period of more than thirty (30) days.

WHEREFORE, the parties acting through their duly authorized representatives have executed this Interlocal Agreement:

CUSTOMER

By: 
Kay Molina, General Counsel

Date: 7/5/16

Dir. 

D.E.D. 

TEXAS A&M ENGINEERING EXPERIMENT STATION

By: 
David Hollingsworth JMH
Director, Contracts and Grants FVW

Date: 7/15/16

EXHIBIT A

Contract No. _____

Task Order No. _____

Scope of Services:

Facilities:

Fee:

Payment Terms:

TEES may terminate this Task Order and agreement if circumstances beyond its control preclude continuation of the services. Upon termination, TEES shall be reimbursed for any costs and non-cancelable commitments incurred through the date of termination.

If Customer fails to make payments as prescribed herein, and fails to cure such nonpayment within thirty (30) days of the date of TEES' Notice of Default, this Task Order shall automatically terminate and TEES shall have the option of immediately terminating the Agreement as set forth in paragraph 7.2.

Agreed as stated above and in referenced attachments (if any):

CUSTOMER

By: _____

Date: _____

TEXAS A&M ENGINEERING EXPERIMENT STATION

By: _____

Date: _____