

**INTERAGENCY COOPERATION CONTRACT
BETWEEN
TEXAS FACILITIES COMMISSION
AND
HEALTH AND HUMAN SERVICES COMMISSION**

This Interagency Cooperation Contract (“Contract”) is entered into by and between the Texas Facilities Commission (“TFC”) and Health and Human Services Commission (“Receiving Agency”), pursuant to the authority granted by and in compliance with the provisions of the Interagency Cooperation Act, Tex. Gov’t Code Ann. §§ 771.001-.010 (West 2012 & Supp. 2016).

I. STATEMENT OF WORK TO BE PERFORMED.

1.01. **SCOPE OF SERVICES.** TFC shall provide, or cause to be provided, professional services for programming and space planning for furnishing and fixtures, design services, cost estimates and administration for Phase I of a new construction project located at the North Austin Complex.

II. BASIS FOR COMPUTING REIMBURSABLE COSTS.

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

III. CONSIDERATION.

3.01. **CONTRACT AMOUNT.** Receiving Agency agrees to pay TFC an amount not to exceed the sum of One Hundred Thirty Four Thousand Four Hundred Eighty Five and 00/100 Dollars (\$134,485.00) for providing the services required to fulfill the terms of this Contract, and includes a line item of One Hundred Twenty Seven Thousand One Hundred Seventy Five 00/100 Dollars (\$127,175.00) for project cost, Four Thousand Six Hundred and 00/100 Dollars (\$4,600.00) for professional project management services provided by TFC, as further described in the Project Management Fee Calculation – Exhibit A-1, attached hereto and incorporated herein for all purposes, and Nine Thousand Seven Hundred Ten and 00/100 Dollars (\$9,710.00) for contingency, as further described in the North Austin Complex Phase I Project Budget – Exhibit A-2, attached hereto and incorporated here in for all purposes.

3.02. **ACTUAL COSTS.** TFC and Receiving Agency agree that payment in advance by Receiving Agency to TFC for services is necessary to effectively and efficiently complete the services, that such payment throughout the term of this Contract would serve a legitimate public purpose, and that the delivery of services may be expedited as a result of advanced payment, as authorized by Section 2155.383 of the Texas Government Code. If actual costs for contracted services provided by third-party contractors for work requested by Receiving Agency will exceed the amount allocated for said service, TFC will provide notice and a revised estimate to Receiving Agency. Prior to exceeding the “maximum contract amount” the parties shall agree to amend this Contract pursuant to Section 4.03 to reimburse for such increased actual costs on a dollar for dollar basis. If actual costs for contracted services by third-party contractors are less than the maximum contract amount, TFC will return any amount that exceeds actual costs to Receiving Agency.

IV. PAYMENT FOR SERVICES.

4.01. **PAYMENT.** An Interagency Transaction Voucher or Invoice (“ITV”) for these services will be prepared by TFC for the full amount of this Contract. Receiving Agency shall reimburse TFC within thirty (30) days from receipt of ITV or invoice for the full amount of this Contract. If payment by Receiving Agency is not received within thirty (30) days, TFC may cancel the Contract without further notice to Receiving Agency, and Receiving Agency shall remain liable for all actual costs incurred by TFC in delivering services under this Contract. TFC shall process all expenditures under this Contract as non-TFC capital budget expenses in that Receiving Agency shall have processed these expenditures as capital expenditures pursuant to the General Appropriations Act (“GAA”), Acts 2017, S.B. 1, 85th Leg., R.S., art. IX, sec. 14.03.

4.02. **UNIFORM STATE ACCOUNTING SYSTEM (“USAS”).** To the extent possible, interagency payments involving only treasury funds will be processed as paperless document transfers in the USAS system subject to audit by the Fund Accounting Division of the Comptroller’s Office. Payments from treasury funds for deposit into local bank accounts will be processed in USAS through the paperless purchase vouchers process. Interagency payments received from local funds for deposit into the State Treasury must be submitted according to policies and procedures for USAS deposits.

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

(b) All reimbursements must be made through the use of local funds or drawn on the appropriated item(s) or account(s) of Receiving Agency from which the agency would ordinarily make expenditures for similar services or resources. Reimbursements will be credited to the appropriation year in which the expenses were incurred.

(c) To comply with the GAA, Acts 2017, S.B. 1, 85th Leg., R.S., art. IX, sec. 6.08, entities making payments from funding sources other than General Revenue Fund appropriations, shall remit an additional amount equal to the percentage of direct labor costs, necessary to cover the cost of the benefits.

4.04. **CAPITAL BUDGET AUTHORITY.** Pursuant to Rider 15 entitled *Capital Construction on Behalf of State Agencies* for TFC found in the GAA, Acts 2017, S.B. 1, 85th Leg., R.S., art. I (Facilities Commission), any capital items related to construction of buildings and facilities including minor construction projects greater than \$250,000 performed by TFC on behalf of other state agencies do not apply to TFC for the purpose of the capital budget rider limitations specified in the GAA, Acts 2017, S.B. 1, 85th Leg., R.S., art. IX, sec. 14.03. By signing this Contract, Receiving Agency certifies it has the requisite capital budget authority to fund the services to be provided under this Contract.

V. TERM OF CONTRACT.

5.01. **TERM.** This Contract shall be effective upon the date of the last party to sign, and shall terminate on December 31, 2021, unless terminated earlier by either party, as provided in Section 5.03.

5.02. **DISPUTE RESOLUTION.** The parties agree to use good-faith efforts to decide all questions, difficulties, or disputes of any nature that may arise under or by this Contract; provided however, nothing in this paragraph shall preclude either party from pursuing any remedies as may be available under Texas law.

5.03. **EARLY TERMINATION.** (a) Either party may terminate this Contract upon thirty (30) days prior written notice to the other. Upon receipt of notice of early termination, TFC shall cancel, withdraw, or otherwise terminate outstanding orders or subcontracts which relate to the performance of this Contract and shall otherwise cease to incur costs under this Contract. Early termination will be subject to an equitable settlement of the respective interests of the parties accrued up to the date of termination.

(b) If this Contract is terminated for any reason, TFC will not be liable for any damages, claims, or losses, or any other amounts arising from or related to any such termination.

VI. FUNDING.

6.01. **NO DEBT.** This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or Receiving Agency and/or TFC in violation of Tex. Const. art. III, § 49. In compliance with Tex. Const. art. VIII, § 6, it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

VII. FORCE MAJEURE.

7.01. **FORCE MAJEURE.** Except as otherwise provided, neither TFC nor Receiving Agency is liable to the other for any delay in, or failure of performance, of a requirement contained in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise or due foresight, such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure.

VIII. MISCELLANEOUS PROVISIONS.

8.01. **INDEPENDENT CONTRACTOR.** It is further mutually understood and agreed that Receiving Agency is contracting with TFC as an independent contractor.

(b) acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and

(c) under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

8.08. **ENTIRE AGREEMENT.** This Contract constitutes the entire agreement of the parties. No other agreement, statement, or promise that is not contained in this Contract shall be binding except a subsequent written amendment to this Contract signed by both parties.

THE UNDERSIGNED do hereby certify that (i) the services specified above are necessary and essential and are properly within the statutory functions and programs of the affected agencies of State Government, (ii) the proposed arrangements serve the interest of efficient and economical administration of those agencies, and (iii) the services, supplies or materials contracted for are not required by Tex. Const. art. XVI, § 21 to be supplied under contract to the lowest responsible bidder.

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

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

TEXAS FACILITIES COMMISSION

HEALTH AND HUMAN SERVICES COMMISSION

By: DocuSigned by: John Raff
C3A4CCED254A46A...
Print Name: John Raff

By: DocuSigned by: Harriett Stephens
831431A9569545B...
Print Name: Harriett Stephens

Title: Interim Executive Director

Title: Associate Commissioner

Date of execution: August 31, 2018

Date of execution: August 29, 2018

NRG G.C.

mw Dir.

MA D.E.D.

TFC Contract No.18-168-000
HHSC Contract No. HHS000205000001

EXHIBIT A-1

TFC CONTRACT NO. 18-168-000

PROJECT MANAGEMENT FEE CAALUTAION

Facilities Design & Construction Lump Sum Project Management Fee Calculation Sheet

19-Mar-18

Project Number: 16-030-8060

Project Name: TFC North Austin Complex Phase 1

F&F Phase 1 - HHSC IAC

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

Project Cost Range	Dormitories		Garages		Warehouses		Offices		Classrooms, Deferred Maint. & Laboratories		Medical Clinical Laboratories	
	Over	Up to*	Over	Up to*	Over	Up to*	Over	Up to*	Over	Up to*	Over	Up to*

New Construction	Over \$ 100,000,000		Project Specific Analysis t									
	Over \$ 50,000,000	2.60%	2.85%	3.10%	3.35%	3.60%	3.85%	4.10%	4.35%	4.60%	4.85%	5.10%
	Over \$ 25,000,000	2.85%	3.10%	3.35%	3.60%	3.85%	4.10%	4.35%	4.60%	4.85%	5.10%	
	Over \$ 15,000,000	3.10%	3.35%	3.60%	3.85%	4.10%	4.35%	4.60%	4.85%	5.10%		
	Over \$ 10,000,000	3.35%	3.60%	3.85%	4.10%	4.35%	4.60%	4.85%	5.10%			
	Over \$ 2,000,000	3.60%	3.85%	4.10%	4.35%	4.60%	4.85%	5.10%				
Up to*	\$ 1,999,999	3.60%	3.85%	4.10%	4.35%	4.60%	4.85%	5.10%				
Renovation and Renewal	Over \$ 100,000,000		Project Specific Analysis t									
	Over \$ 50,000,000	3.60%	3.85%	4.10%	4.35%	4.60%	4.85%	5.10%				
	Over \$ 25,000,000	3.85%	4.10%	4.35%	4.60%	4.85%	5.10%					
	Over \$ 15,000,000	4.10%	4.35%	4.60%	4.85%	5.10%						
	Over \$ 10,000,000	4.35%	4.60%	4.85%	5.10%							
	Over \$ 2,000,000	4.60%	4.85%	5.10%								
Up to*	\$ 1,999,999	4.60%	4.85%	5.10%								

Fee Interpolation Formula

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

- 1 \$ 120,175 Project Cost (expressed as dollars, e.g. 10,000,000)
- 2 \$ 1,999,999 Upper Project Cost Range (expressed as dollars, e.g. 10,000,000) **
- 3 \$ - Lower Project Cost Range (expressed as dollars, e.g. 10,000,000) **
- 4 3.85% TFC Fee % for Upper Project Cost Range (expressed as a number, e.g. 3.00) ***
- 5 3.85% TFC Fee % for Lower Project Cost Range (expressed as a number, e.g. 3.25) ***
- 6 3.85% Resulting TFC Fee %
- 7 \$ 4,600 Resulting TFC Lump Sum Project Management Fee - rounded to the nearest hundred dollars.

* The fee is applied as a fixed rate regardless of project cost and not interpolated.

** If the Project Cost is greater than the Upper Project Cost Range (> \$100,000,000), enter "1" for the Upper Range and "0" for the Lower Range.

*** If the Project Cost is greater than the Upper Project Cost Range (> \$100,000,000), enter the same percentages in both fields.

t PM Fees for projects exceeding \$100 Mil. in budget will be established from a project specific analysis that will consider the necessity for land acquisition, FDC project work load, project schedule, staffing, outsourced management services, necessity and breadth of local government interaction and other factors impacting the cost recovery of FDC project management services.

TFC Contract No. 18-168-000
HHSC Contract No. HHS000205000001

EXHIBIT A-2

TFC CONTRACT NO. 18-168-000

NORTH AUSTIN COMPLEX PHASE I PROJECT BUDGET

North Austin Complex Phase I
 Project Budget
 Texas Facilities Commission Facilities Design Construction
 4/4/2018

PROJECT SCOPE DESCRIPTION:

North Austin Complex, Phase 1 - HHSC Furniture and Fixtures
 Design, Select and provide documentation for furnishings indicated for all levels see chart below.

PROJECT FUNDING:
 Interagency Contract

CAPITAL PROJECT BUDGET:

Description	Budget	Remarks
Technical Services		
Architect/Engineer Fees - McKinney York	101,675	Includes services as noted in proposal SD, DD, CD, Bid and CA
Architect/Engineer Fees - McKinney York	18,500	Programming for Cross Park admin area and HHSC F&F items
TFC Project Management (3.85% of proj cost)	4,600	Lump Sum Fee
	0	
Expected Procurement Costs:		
Furniture and Fixtures - HHSC items	1,750,000	Estimated Procurement amount - for HHSC furniture and fixtures Not part of this IAC since ordering will be 2 years in future.
Miscellaneous Costs:		
Other / Misc.	\$175,000	Escalation of furniture - 2020 Procurement
Contingency:	9,710	Standard 6%
	Total:	
	<u>\$134,485</u>	