



PROFESSIONAL ARCHITECT/ENGINEER SERVICES
AGREEMENT

GEORGE H. W. BUSH STATE OFFICE BUILDING
1801 CONGRESS AVENUE
CAPITOL COMPLEX PROJECT
BETWEEN

THE TEXAS FACILITIES COMMISSION
AND
HKS, INC.

**PROFESSIONAL ARCHITECTURAL/ENGINEERING
SERVICES AGREEMENT**

BETWEEN

**THE TEXAS FACILITIES COMMISSION
AND**

HKS, INC.

The Texas Facilities Commission (hereinafter referred to as “TFC” or “Owner,” as defined herein), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701, and HKS, Inc., an S corporation (hereinafter referred to as “Architect/Engineer” or “A/E” as defined below), located at 350 North Saint Paul Street, Suite 100, Dallas, Texas 75201, enter into the following agreement for professional services (hereinafter referred to as the “Agreement” or “Contract”) pursuant to the Professional Services Procurement Act, Tex. Gov’t Code Ann. Ch. 2254, Subch. A (West 2016), to be effective as of the Effective Date (as defined below). Nothing in this Agreement shall be interpreted or construed to make Contractor (as defined below) a third-party beneficiary hereunder.

RECITALS

WHEREAS, TFC has determined that it requires architectural and engineering services for the design of a multi-level building to be located at 1801 Congress Avenue for its Capitol Complex Project to be located in Austin, Texas; and

WHEREAS, in reliance upon the representations made by A/E in its response to TFC’s Request for Qualifications 303-7-01647 dated June 9, 2017 (“RFQ”), TFC has determined that A/E has demonstrated its competence and qualifications to provide the requested services; and

WHEREAS, A/E has agreed to provide the services contemplated hereunder; and

WHEREAS, TFC has agreed to compensate A/E for these services, as provided herein;

NOW, THEREFORE, in consideration of the mutual promises, commitments and representations herein it is hereby agreed as follows:

I. DEFINITIONS.

1.1. Definitions. Unless specifically provided otherwise herein, all words and phrases in this Agreement in initial caps shall have the meanings set out in the *2015 Uniform General Conditions* (hereinafter referred to as “UGC”) and this Section 1.1. In the event of any conflict between the definitions in the UGC, and the *Supplementary General Conditions*, a digital copy of each of which is incorporated herein by reference for all purposes in Portable Document Format (“PDF”) on the compact disk attached hereto and labeled “TFC Contract No. 18-142-000 / HKS, Inc. / Exhibits CD” (hereinafter referred to as “Exhibits CD”), and named therein as “Exhibit A,” and “Exhibit

B,” respectively, in A/E Guidelines (as defined below), or in any other document referenced herein and incorporated for all purposes, and the definitions in this Agreement, the definitions used in this Agreement shall control to the extent of the conflict.

1.1.1. *Additional Services* means those services not included in Article II of this Agreement which may be requested by TFC at any time for the duration of this Agreement, as discussed in Section 4.5 below.

1.1.2. *Approval or Approved* means the written approval of TFC. TFC may exercise the right of Approval in its sole discretion. TFC’s Approval shall also require formal approval of TFC’s board of commissioners (the “Commissioners”) whenever approval of the Commissioners is expressly required by this Agreement, or is otherwise required by state law or TFC’s policies. The act of an Approval shall not constitute a waiver of TFC’s rights hereunder or excuse A/E from fulfilling its obligations to perform in accordance with this Agreement.

1.1.3. *A/E Guidelines* means the TFC Architectural/Engineering Guidelines, a digital copy of which is incorporated herein by reference for all purposes in PDF on the Exhibits CD and incorporated herein for all purposes as “Exhibit C.”

1.1.4. *A/E Personnel* means all A/E’s staff, Subcontractors, subconsultants and vendors of any tier who contract to perform any of A/E’s obligations or duties hereunder, as shown in List of A/E’s Key Personnel, incorporated herein for all purposes as “Exhibit D.”

1.1.5. *A/E’s Fee Schedule and Staffing Plan* is that fee schedule that provides for payment of A/E’s fee and includes A/E’s plan for staffing to be covered by A/E’s Fee, as described in A/E’s Fee Schedule and Staffing Plan, incorporated herein for all purposes as “Exhibit E.”

1.1.6. *A/E Project Manager* means the individual designated by A/E, and who must be approved by TFC, as the contact person with specific authority to properly supervise and direct the duties and responsibilities of A/E, on behalf of A/E, pursuant to the terms and conditions of this Agreement, and who shall have decision-making authority to bind A/E with respect to the Professional Services for the Project.

1.1.7. *Architect/Engineer (A/E)* means Architect or Engineer of Record, HKS, Inc. the architectural and engineering service provider contracted by TFC hereunder to perform the professional architectural and engineering design services, after receipt of bridging documents from the Master Architect/ Engineer (Master A/E) at the end of conceptual design, and any licensed professionals and other personnel working under the Architect/Engineer’s supervision, or otherwise engaged by TFC to prepare the design for all or a portion of the Project.

1.1.8. *Budget* means the maximum amount of funding that has been authorized by and is available to TFC to pay CMR for the services and Work required under the Construction Contract for the Project, including any preconstruction services fee, Guaranteed Maximum Prices (including all construction management fees therein), and all change orders. The Budget is currently estimated to be One Hundred Seventy Million Three Hundred Fifty and No/100 Dollars

(\$170,350,000.00), which estimate may be amended from time to time by TFC in its sole discretion as further assessments, design and construction cost estimates are developed by the Project Team.

1.1.9. *Building Information Model* or *BIM* means a computable multi-dimensional representation of the physical and functional characteristics of the Project's facilities and their related life-cycle information, to be used as a repository of design and construction information for use by the Project Team during the design, bidding and construction phases of the Project, and for TFC's use throughout the life-cycle of the facilities.

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

1.1.11. *Certificate of Substantial Completion* means the certificate signed by CMR, A/E, and TFC establishing the date of Substantial Completion for the applicable part of the Work, and identifying responsibilities for security and maintenance as set out in UGC, Paragraph 12.1.1.2.

1.1.12. *Close-out and Record Documents Deadline* means the date that is a fixed number of days after the date of delivery of all Close-out Documents to A/E.

1.1.13. *Close-out Documents* has the same meaning as defined in UGC, Section 1.10 and includes CMR's marked-up "as-builts."

1.1.14. *Communication Protocol* means the communication and tracking procedures to be utilized for interaction and reporting between TFC, CMR, Contractors, Subcontractors, SSE and A/E, including but not limited to, the use of any EPMCS utilized by TFC for the Project.

1.1.15. *Conceptual Design Package(s)* or *CDP(s)* means one or more sets of documents developed by Master A/E and CMA, as approved by Owner, to provide sufficient information to describe and establish the design parameters for the Projects, including, as appropriate, the legal description of the Sites of the Projects, site surveys, site development requirements and other information related to the Sites, conceptual criteria for the Projects, interior space requirements, special material requirements, material quality standards, special equipment requirements, cost or budget estimates, Project Schedules, quality control requirements, applicable codes and ordinances, provisions for utilities, parking requirements, or any other requirement, as applicable.

1.1.16. *Conceptual Design Phase* means that stage of a Project culminating in the preparation and submission of a Conceptual Design Package that includes preliminary design or series of preliminary design alternatives based on CMA's and Master A/E's review of Owner's Design Program and the 2016 Texas Capitol Complex Master Plan, "Exhibit F," incorporated herein for all purposes and located at: <http://www.tfc.state.tx.us/divisions/commissionadmin/tools/> (hereinafter referred to as the "Master Plan"). This phase includes CMA's and Master A/E's preliminary evaluation of alternative approaches to designing the Projects, taking into consideration the requirements of the Projects and the Program Budget, including the elements of

the *Schematic Design Package*. This shall include the combination of: (i) Schematic Design Drawings; (ii) an outline summary of the areas within the proposed Project, such summary corresponding to the general categories in the space allocation outlined in the Design Program; and (iii) a description of the building and general Site development that shall include an overview of proposed exterior architectural materials and structural systems together with the MEP Systems and services being contemplated.

1.1.17. *Consideration* means the funds and any and all other forms of valid, legal consideration as discussed in Article IV of this Agreement.

1.1.18. *Construction Contract* means all the contract documents comprising the contract between Owner and CMR, including, as applicable, all exhibits to the Construction Contract, Owner's solicitation, addenda, notice(s) to bidders, CMR's Guaranteed Maximum Price(s), prevailing wage schedules, list of Subcontractors, Owner's notice to proceed, bonds, general provisions, special provisions, Specifications, Drawings, all modifications, all written amendments, change orders, field orders, orders for minor changes in the work, and the Architect/Engineer's written interpretations and clarifications issued on or after the effective date of such contract.

1.1.19. *Construction Manager Agent or CMA* means Balfour Beatty Construction, LLC, the service provider engaged hereunder as the TFC's fiduciary agent to assist the TFC with management and coordination of the overall design and construction program for the Capitol Complex Projects.

1.1.20. *Construction Manager-at-Risk* or *CMR* has the same meaning as defined in UGC, Section 1.18, and also refers to the service provider to be engaged by TFC for Phase 1 of the Project to perform (or cause to be performed) the Work on Phase 1 of the Project as a Construction Manager-at-Risk.

1.1.21. *Construction Documents* has the same meaning as defined in UGC, Section 1.17.

1.1.22. *Construction Documents Phase* means that stage of a Project that follows the Design Development Phase, and culminates in the preparation and issuance of fully complete construction design documents that illustrate and incorporate Approved changes to the Design Development Documents and consisting of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work, subject to additional information to be provided by CMR for the Architect/Engineer's review, such as shop drawings, product data, samples and other similar submittals.

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

1.1.24. *DD Documents* means the design development documents, i.e., such plans, elevations, and such other drawings, calculations, and outline specifications that are of such quality and detail that enable TFC to fix and illustrate the size and character of the entire Project in its

essentials as to kinds of materials and assembly details and type of structure and to coordinate the interface of all architectural and structural elements with all building systems.

1.1.25. *Deliverables* means any and all drawings, specifications, cost estimates, photos, designs, studies, sketches, computer programs, field and laboratory data, reports, and other information, whether in printed or electronic media format, provided or furnished in appropriate phases by A/E in the performance of the Professional Services, which are specified to be delivered by A/E pursuant to the terms of this Agreement.

1.1.26. *Design Development Phase* means that phase of a Project that follows the Conceptual Design Phase, and culminates in the preparation and issuance of detailed design documents that illustrate and incorporate Approved changes to the Schematic Design Documents, and include drawings, specifications, plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of a Project and to identify the quality levels of major materials and systems for architectural, life safety, fire protection, civil, structural, mechanical and electrical disciplines, and such other elements and systems as may be appropriate.

1.1.27. *Design Package* means all or a part of the Construction Documents, including all Drawings, Specifications and other Construction Documents issued by the Architect/Engineer at a designated point in time as required for bidding, procurement and construction for a specific scope of the Work.

1.1.28. *Design Program* means, collectively, the overall goals, the design objectives, the aesthetic considerations, the functional requirements, and the design and construction for the Project, including: (i) allocations of space with uses and adjacency relationships for all areas/spaces; (ii) operational objectives and such standards of design that TFC may require for all architectural and engineering disciplines in the design and construction of the Project; and (iii) the development of the PMP.

1.1.29. *Drawings* means the graphic and pictorial portions of the documents developed in connection with the Design Program, Schematic Design Phase, Design Development Phase, Construction Documents Phase, or the construction phase, and including all information required to maintain the Building Information Model(s), showing the design, location and dimensions of the Work, and generally including plans, elevations, sections, axonometrics, isometrics, details, schedules and diagrams.

1.1.30. *Effective Date* means the latest Date of Execution set forth below the signatures of the Parties' duly authorized officers, as shown on the last page of this Agreement.

1.1.31. *EPMCS* means the Approved electronic project management control system.

1.1.32. *Final Completion* means that stage of completion by which all "punch-list" items identified in connection with the Substantial Completion of a Phase of the Project have been corrected, completed, or otherwise addressed to the satisfaction of Owner, Architect/Engineer, all

building inspectors, and all other Governmental Authorities, as evidenced by the issuance of a certificate of Final Completion signed by CMR and Architect/Engineer.

1.1.33. *Fixed Limit of Cost* means the maximum amount of funding that has been authorized by and is available to TFC to pay for all design and construction costs for the Project, as approved by Owner, including the Budget and other costs for the procurement of applicable furniture, fixtures and other equipment (FFE) to be installed in the Project. Fixed Limit of Cost shall be established upon Approval of the Budget. The Fixed Limit of Cost is currently estimated to be Two Hundred Four Million and No/100 Dollars (\$204,000,000.00), and may be adjusted up or down at any time during any phase of the Project by Owner, in Owner's sole discretion, whether by use of any contingency budgeted by Owner or otherwise.

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

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

1.1.36. *Governmental Authorities* means all federal, state, and local governmental entities having jurisdiction over the Project, and A/E.

1.1.37. *Hourly Fee Rates* shall mean the rates set forth in the Schedule of A/E's Hourly Fee Rates for Additional Services, incorporated herein for all purposes as "Exhibit G," for Additional Services to be performed by A/E.

1.1.38. *Initial Conceptual Designs* means initial concept drawings and block diagrams that are of such quality and detail to enable TFC to establish design direction.

1.1.39. *Laws and Regulations* means any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all Governmental Authorities, 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 Texas Accessibility Standards found in Texas Government Code, Chapter 469 (West 2012 & Supp. 2015).

1.1.40. *Master A/E* means Page Southerland Page, Inc., the service provider TFC has engaged pursuant to Texas Government Code §2254 as the TFC's agent for oversight, coordination and management of the overall design of the Capitol Complex Projects by each of the Architect/Engineers for the Projects.

1.1.41. *MEP Systems* means mechanical, electrical, and plumbing systems.

1.1.42. *Notice of Authorization* or *NOA* means the written authorization to proceed to the next phase of development of Construction Documents. Notice of Authorization is to be distinguished from a Notice to Proceed.

1.1.43. *Notice of Termination* means the written notice of termination described in Section 3.2.

1.1.44. *Notice to Proceed* or *NTP* means the written authorization to proceed with commencement of Professional Services that may be delivered to A/E by TFC.

1.1.45. *Order-of-Magnitude Opinion of Probable Construction Cost* means a level one cost estimate to facilitate budgetary and feasibility determinations, based on historical information with adjustments made for specific project conditions, wherein estimates are based on costs per square foot, number of rooms/seats, and the like. Project information required for estimates at this level include a general functional description, schematic layout, geographic location, size expressed as building area, numbers of people, seats, and the like, and intended use.

1.1.46. *Owner, Texas Facilities Commission, 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 Agreement.

1.1.47. *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.

1.1.48. *Pay Application* means the application for payment submitted by A/E as discussed in Article IV below.

1.1.49. *Periodic Reports* means the written reports required to be submitted to TFC by A/E, which reports shall be compiled and submitted in such form as prescribed by TFC.

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

1.1.51. *Post-Final Inspection Punchlist* means the punchlist of items that A/E will deliver to CMR 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.

1.1.52. *Post-Final Inspection Punchlist Deadline* means the date that is a fixed number of days after the date by which A/E shall deliver any Post-Final Inspection Punchlist to CMR.

1.1.53. *Pre-Design Deadline* means the date that is a fixed number of days after delivery of a Notice to Proceed, and by which date A/E shall (i) complete all the Pre-Design Tasks, and (ii) prepare and deliver the Pre-Design Task Reports to TFC.

1.1.54. *Pre-Design Task Report* means a comprehensive report(s) that sets forth the results of, and answers to, each of the Pre-Design Tasks discussed in Article II.

1.1.55. *Pre-Design Tasks* means the mobilization and pre-design services to be provided to TFC as discussed in Article II.

1.1.56. *Pre-Final Inspection Punchlist* means the list of any unresolved punchlist items that A/E will deliver to CMR when a Certificate of Substantial Completion is delivered by TFC as discussed in UGC, Paragraph 12.1.1.2.

1.1.57. *Pre-Final Inspection Punchlist Deadline* means the date that is a fixed number of days after the completion of the Substantial Completion Inspection, and by which date A/E shall prepare and deliver a proposed Post-Substantial Completion Inspection Punchlist to TFC.

1.1.58. *Professional Services* means the services required by this Agreement, as further described in Article II below.

1.1.59. *Professional Services Schedule* or *Schedule* means the schedule/timeline set out on the Exhibits CD and incorporated herein for all purposes as “Exhibit H,” and which schedule/timeline sets out the deadlines in terms of a fixed number of days after a preceding deadline for completion and delivery of discrete portions of the Professional Services, which deadlines shall be calculated from the effective date of a Notice to Proceed. At the discretion of TFC project manager and as mutually agreed upon with A/E, the Professional Services Schedule may be revised and defined with more detail as the project develops.

1.1.59.1. The Parties acknowledge that upon execution of this Agreement, the Schedule will not reflect the date of issuance of NTP, nor whether the Project will be completed as a single package or in multiple combinations of packages. At such time that NTP is issued, TFC shall enter said date into the Schedule, which will result in the Professional Services Schedule for such package being filled-in with specific deadlines.

1.1.59.2. Upon entry of the date of issuance of NTP, the Professional Services Schedule, as revised, shall become, without further notice or action, the effective Professional Services Schedule, and said revised Schedule shall be considered substituted for the original Professional Services Schedule, and shall be added to the Exhibits CD.

1.1.60. *Program Management Plan* means a management plan for all projects in the Design Program developed by the CMA.

1.1.61. *Project* means the excavation and related work for the Capitol Complex Project, as further described in Article II.

1.1.62. *Project Analysis* has the same meaning as defined in Texas Government Code, Section 2166.001(5) (West 2016).

1.1.63. *Project Manual* means the compilation of the general requirements and the Specifications to be developed and issued for the Work for the Project by the Architect/Engineer.

1.1.64. *Project Stage(s)* means a discrete period during the construction of the Project in which a scope of Work required by a Design Package is performed by CMR.

1.1.65. *Project Team* means the SSE, Master A/E, A/E, CMA, CMR, and any separate Contractors, consultants, or other service providers employed by TFC for the purpose of planning, programming, design, construction, and commissioning of the Project. The constitution of the Project Team may vary at different phases of the Project and may be modified from time to time by TFC.

1.1.66. *Reimbursable Expenses* means those reasonable and necessary out-of-pocket costs and expenses incurred by A/E for the provision of the Professional Services that are approved by TFC.

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

1.1.68. *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.

1.1.69. *RFI Response Deadline* means the date that is seven (7) calendar days after receipt, or uploading, of an RFI, and by which date A/E must deliver an RFI Response to CMR.

1.1.70. *Safety Incident* means any failure of A/E or any of A/E Personnel to manage performance of A/E Personnel in accordance with the safety requirements set forth in Article V of this Agreement as necessary to recognize and successfully prevent or avoid any of the following circumstances (each being a Safety Incident):

1.1.70.1 the reported observation of a potential safety hazard, unsafe work practice, or lapse in prudent safety management that can reasonably be expected to lead to injury or death to any person, or damage to any property;

1.1.70.2 the presence of any unsafe working condition, including without limitation any unauthorized or improper usage of equipment or faulty equipment, that reasonably be expected to lead to injury or death to any person, or damage to any property; and

1.1.70.3 the occurrence of bodily injury or death, or property damage arising out of or in connection with the Project or the performance of the Services.

1.1.71. *Schematic Design Package* means, for purposes of this agreement, the Conceptual Design Package as defined in Section 1.1.15.

1.1.72. *Scope of Services* means the Professional Services as set out in Article II below.

1.1.73. *Services* means the services provided by A/E, A/E Personnel and/or by Subcontractors and/or consultants retained by A/E for the Project.

1.1.74. *Site(s)* means the lands, areas, and/or buildings generally described in Article II as the Capitol Complex Site, and indicated in the Contract Documents as being furnished by TFC as the Sites upon which the Work is to be performed.

1.1.75. *Site Services Engineer* or *SSE* means Cobb, Fendley & Associates, Inc., the service provider TFC has engaged to provide the site environmental and engineering services for the Project.

1.1.76. *Specifications* means that portion of the Construction Documents consisting of the written technical requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services, including all requirements of applicable building and life safety codes.

1.1.77. *Standard of Care* means A/E's Standard of Care defined in Section 6.1.4.

1.1.78. *Subcontract* means any agreements between A/E and a Subcontractor or consultant.

1.1.79. *Subcontractor* means any Person that enters into an agreement with A/E to perform any part of the Professional Services.

1.1.80. *Substantial Completion* means that stage of completion by which the Work or a portion thereof is accepted by execution of a certificate of Substantial Completion by Owner, Architect/Engineer and CMR as sufficiently completed, inspected, and approved by the appropriate Governmental Authorities as evidenced by issuance of a certificate of Substantial Completion, for Owner's occupancy or partial occupancy for its intended purposes, excluding only minor portions of the Work that remain unfinished pending Final Completion and final inspection. Partial use or occupancy shall not result in the Project being deemed substantially complete and shall not be evidence of substantial completion, nor shall execution of a certificate of Substantial Completion be deemed to excuse unidentified or uncorrected defects in the Work or services of a service provider.

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

1.1.82. *Substantial Completion Inspection Deadline* means the date that is a fixed number of days after proper written notification is delivered to TFC and A/E by CMR that CMR has fully satisfied the requirements set out in UGC, Paragraph 12.1.1.1, and by which date A/E must conduct a Substantial Completion Inspection.

1.1.83. *TDLR* means the Texas Department of Licensing and Regulations.

1.1.84. *TFC Project Manager(s)* means the employee(s) of TFC authorized and assigned to communicate with and act on TFC's behalf to administer A/E's Agreement, and to manage and oversee the Project Team in connection with the Projects. An individual designated as a TFC Project Manager pursuant to this Agreement is authorized to act on behalf of TFC with respect to the day-to-day management of the Services required under this Agreement, inclusive of managing TFC's review and Approval of the Professional Services and operating as the point of contact between TFC, the Using Agency (if any), and A/E.

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

1.1.86. *Utilities* means water, sewer, gas, electric, telecom, cable, and like services.

1.1.87. *Utility Providers* means any and all entities that provide Utilities to the Project.

1.1.88. *Warranty Report* means the comprehensive report of the findings of A/E pursuant to the inspections, and which must include, but not be necessarily limited to, a list of the items needing replacement, correction, or repair.

1.1.89. *Warranty Report Deadline* means the date that is three hundred thirty-five (335) days after the date that a Certificate of Substantial Completion has been issued as to the Work, or a discrete portion thereof, and by which date A/E shall deliver the warranty and guarantee phase services.

1.1.90. *Work* means the physical construction and related services required by the Construction Documents to construct each Phase of the Project, and includes all other labor, materials, equipment and services provided or to be provided by CMR to fulfill CMR's obligations. The Work may constitute the whole or a part of the Projects.

1.1.91. *Work Product* shall mean all work product, including all instruments of service, submittals, Drawings, Specifications, Project Manuals, documents, plans, data compilations or calculations, Building Information Models, studies, reports, or other documents, and all ideas incorporated therein, and all intellectual property rights associated therewith, which are prepared by or on behalf of any Service Provider, in connection with the Projects or in connection with the performance of the Services or Additional Services hereunder, which Work Product shall, except as otherwise set forth in this Agreement be and remain the property of TFC, and shall only be used by A/E in a manner strictly adhering to A/E's limited use and ownership rights as set forth in this Agreement.

1.1.92. *Worksite(s)* has the same meaning as the defined term "Site(s)," as set forth in Section 1.1.74, above.

II. SCOPE OF SERVICES.

2.1. Description of Project.

2.1.1. Professional Services for George H. W. Bush State Office Building (1801 Congress Building). The Project includes professional architectural and engineering services for design development, Construction Documents, construction administration, and warranty management for a new State of Texas office building at 1801 Congress Avenue. A/E shall utilize the conceptual plans and bridging documents provided by the Master A/E, as described in Section 1.1.7, in preparation of the documents.

2.1.2. Site. The Project is Package 4 of the Capitol Complex Phase 1, and is a new State of Texas office building located at 1801 Congress Avenue on existing Parking Lot 7 east of the Texas State Historical Museum.

2.2. Scope of Services. A/E agrees to timely deliver the Professional Services described below and in the Detailed Scope of A/E's Services, incorporated herein for all purposes as "Exhibit I," pursuant to the Professional Services Schedule. A/E shall provide utility design coordinated to avoid utility disruption to existing structures. Deliverable package shall include sealed engineering design document package for bidding, permitting and construction. A/E's Services shall include provision of all documents required for permitting including but not limited to: SWPPP, street and sidewalk closures, encroachment agreements, and traffic control, as related to the utility portion of the Capitol Complex Project.

2.2.1. Portions of the Project. The scope of services includes the following portions of the Project.

- 2.2.1.1. 1801 Congress Building core and shell.
- 2.2.1.2. 1801 Congress main building lobby and lobby finishes.
- 2.2.1.3. 1801 Congress above-grade parking garage.
- 2.2.1.4. Below-grade parking garage under 1801 Congress Building,
up to grid line 6.
- 2.2.1.5. Interior finish out of all shared, base-building spaces.
- 2.2.1.6. Core and shell impacts of the future cultural venue/museum.
- 2.2.1.7. Fixed furnishings, casework, and modular furniture.
- 2.2.1.8. Technology infrastructure and cabling.
- 2.2.1.9. Exterior building signage and lighting.

2.2.1.10. Utilities within five (5) feet of the building exterior walls.

2.2.1.11. Incidental excavation such as for utility connections, perimeter beams, elevator pits, *etc.*

2.2.1.12. Site improvements specifically defined in the bridging documents, as described in Section 1.1.7.

2.2.1.13. Audio visual equipment specifically defined in the bridging documents, as described in Section 1.1.7.

2.2.2. Project Exclusions. The following are not included in the scope of work:

2.2.2.1. Major excavation of basement.

2.2.2.2. Utility relocation.

2.2.2.3. Landscaping, except as specifically defined in the bridging documents, as described in Section 1.1.7.

2.2.2.4. Site improvements, except as indicated in Section 2.2.1.13, above.

2.2.2.5. Interior fit-out of cultural venue.

2.2.2.6. Fit-out of food service spaces.

2.2.2.7. Loose building furnishings.

2.2.2.8. Audio visual systems except as indicated in Section 2.2.1.14, above.

2.2.2.9. Design services performed by the Texas Lottery Commissions Architect/Engineer of Record.

2.2.2.10. Interior fit outs for state agencies. This portion of the Scope of Services will be accomplished at a later date through written amendment(s) signed by the parties to this Contract.

2.2.3. General Duties for Performance of Services.

2.2.3.1. A/E shall furnish or provide the architectural and engineering Services necessary and/or reasonably inferable from this Agreement (regardless of whether expressly described herein) and all other relevant data for the successful design and construction

of the multi-level building, 1801 South Congress, Capitol Complex Project, in accordance with TFC's requirements, as outlined in TFC's relevant data defining the Project, and in the Owner's Project Requirements, a digital copy of which is contained on the Exhibits CD, named therein as "Exhibit J," and incorporated herein for all purposes (hereinafter referred to as "OPR"). The Professional Services shall include Basic Services, plus Additional Services as may be authorized by TFC.

2.2.3.2. A/E shall, in accordance with its Standard of Care, verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied by TFC and other members of the Project Team to A/E prior to being used by A/E in the performance of the Services. Failure to notify TFC of any inaccuracies shall be considered a waiver of liability for such inaccuracies.

2.2.3.3. A/E's Services, including all Deliverables of A/E, shall be accurate and free from material errors and/or omissions in accordance with its Standard of Care. Upon notice, A/E shall promptly correct any known or discovered error, omission, or other defect without any additional cost or expense to TFC.

2.2.3.4. A/E understands and acknowledges that A/E has assumed the contractual obligation to Owner to advise and assist Owner in connection with the architecture and engineering for the Project. Unless otherwise directed by Owner, the communications of A/E with respect to the Services shall be directed to Owner. Nothing in this Contract shall be construed to limit or restrict the right of Owner to communicate directly with any service provider at any time. Owner expressly reserves such right hereunder, which right Owner intends to expressly reserve in all of Owner's contracts with the service providers. In no event shall Owner's election to initiate any such communication be deemed or construed to be an interference with the contractual relationship or rights of A/E or any service provider, or an abrogation of any rights of Owner under this Contract.

2.2.3.5. A/E understands and acknowledges that the Project will be constructed in a multi-phased manner requiring and construction phase Services to be performed contemporaneously in connection with the development, issuance, and execution of multiple Construction Packages. At a minimum, the Construction Packages presently contemplated by Owner are as follows:

2.2.3.5.1. core and shell with the possibility of multiple packages; and

2.2.3.5.2. multiple packages for tenant finish out.

2.2.3.6. A/E shall develop each Design Package pursuant to the requirements set forth for each successive phase of design described herein, including submission of interim submittals and design documents to TFC for review in accordance with the Owner Coordinated Document Review Process, Section 2.2.5, below.

2.2.3.7. A/E shall follow the Program Management Plan (“PMP”) established by the CMA, including but not limited to the following:

- 2.2.3.7.1. communication protocols;
- 2.2.3.7.2. procedures for budget management and monthly reporting;
- 2.2.3.7.3. schedule management procedures;
- 2.2.3.7.4. quality assurance and construction inspection procedures;
- 2.2.3.7.5. procedures for filing systems;
- 2.2.3.7.6. procedures for correspondence and transmittals;
- 2.2.3.7.7. procedures for requests for information;
- 2.2.3.7.8. protocols for submittals;
- 2.2.3.7.9. procedures for meetings;
- 2.2.3.7.10. procedures issues tracking;
- 2.2.3.7.11. procedures for reporting (weekly/monthly);
- 2.2.3.7.12. protocols for record/document management;
- 2.2.3.7.13. Project closeout procedures;
- 2.2.3.7.14. safety procedures;
- 2.2.3.7.15. protocols for design and cost reviews;
- 2.2.3.7.16. commissioning procedures; and
- 2.2.3.7.17. project scheduling, sequencing, phasing and partitioning plans and information.

2.2.3.8. The Program Management Plan has been developed by the CMA with the Master A/E’s assistance in cooperation and consultation with Owner with the objective of: (i) ensuring adherence to the design integrity established in the Design Program, the Master Plan, and the OPR; (ii) optimizing opportunities for Owner to reduce Project costs; and (iii) reducing Project delivery schedules to the extent reasonably and commercially possible.

2.2.4. Pre-Design Phase. No later than the Pre-Design Deadline, A/E shall timely deliver the following Pre-Design Tasks to TFC.

2.2.4.1. Consult with TFC staff, and become thoroughly familiar with: (i) the conceptual plans, "Exhibit K," incorporated herein by reference and available from the TFC Project Manager; (ii) the Design Program; (iii) the 2016 Capitol Complex Master Plan; (iv) applicable sections of the Program Management Plan; and (v) the OPR.

2.2.4.2. Inspect and timely become thoroughly familiar with the Site for the Project.

2.2.4.3. Review and become thoroughly familiar with any and all relevant and existing Project, Site, and facilities studies and information, including geotechnical reports and recommendations.

2.2.4.4. Review and become thoroughly familiar with the Budget proposed by TFC and CMA, and advise TFC if, in the opinion of A/E, the Budget is adequate in terms of categories and values so as to allow for the design and timely construction of Phase 1 of the Project as contemplated. If, in the opinion of A/E, the Budget is adequate, A/E shall confirm in writing its ability to prepare the DD Documents that will comply with the Design Program parameters and the Budget. If, however, in the opinion of A/E, the Budget proposed by TFC is inadequate or insufficient, the parties shall diligently pursue making appropriate adjustments as would be necessary to enable A/E to confirm the adequacy of the Budget. If such efforts should fail, TFC, at its option, may: (i) waive the provisions of this subsection; or (ii) terminate this Agreement. The parties acknowledge and agree that subsequent changes in Design Program or scope of the Project may be cause to modify and/or amend the Budget. Any such modification or amendment to the Budget must be authorized by TFC in writing.

2.2.4.5. Review and become thoroughly familiar with the Integrated Master Schedule and advise TFC if, in the opinion of A/E, the schedule is adequate in sequence and duration to allow for timely design and construction of the Project. A/E shall confirm its schedule to this reconciled schedule.

2.2.4.6. Confirm all codes, rules, regulations and all other related requirements identified by the Master A/E.

2.2.4.7. Receive and become familiar with requirements of the technical and design standards of TFC and the Using Agency, including, but not limited to, A/E Guidelines, Master Plan, Exhibit F," Design Guidelines, and OPR, "Exhibit J."

2.2.4.8. Determine and identify to TFC which additional Subcontractor(s), if any, that are not engaged, or to be engaged, by A/E pursuant to this Agreement, will be necessary to complement the Professional Services in order to fulfill requirements of this

Agreement, if any such Subcontractors have not been identified by A/E in its List of A/E's Key Personnel, "Exhibit D."

2.2.4.9. Implement the CAD and BIM systems, the BIM Protocols, incorporated herein for all purposes as "Exhibit L," pursuant to the BIM Addendum and the EPMCS which have been established by the CMA.

2.2.4.10. In coordination with the Master A/E, deliver a Design Task Report to TFC. Upon consent of TFC, A/E may deliver one (1) amendment to the Design Task Report no later than the Design Deadline.

2.2.5. Owner Coordinated Document Review Process. A/E agrees to timely deliver the "Owner Coordinated Document Review Process" as follows.

2.2.5.1. During the design phase of the Project, the design schedule shall accommodate a periodic review of the Construction Documents at various milestones, to be coordinated by TFC, at the following milestones and in the sequential order listed: Design Development; 65% Construction Documents; 95% Construction Documents; and 100% Construction Documents.

2.2.5.2. Each review shall include the following steps to comprise a complete review for each milestone listed above.

2.2.5.2.1. A/E shall have a fixed number of days after TFC's notice of authorization to A/E to proceed with the next phase of design. The fixed number of days for development of each phase of design shall conform to the reconciled Integrated Master Schedule.

2.2.5.2.2. TFC, A/E, Master A/E, CMA and CMR shall meet to review the milestone submittal, five (5) calendar days or the first weekday thereafter following A/E deadline.

2.2.5.2.3. The formal review comments and deadline is the date occurring five (5) calendar days or the first weekday thereafter following the review meeting upon which the CMA, in collaboration with the TFC and the Master A/E, shall prepare and deliver comments to A/E and CMR; and CMR shall prepare and deliver CMR's comments to TFC and A/E.

2.2.5.2.4. A/E reply and deadline is the date occurring five (5) calendar days or the first weekday thereafter following A/E's receipt of formal review comments upon which A/E shall provide written evidence that, in TFC's sole discretion, resolves all formal comments.

2.2.5.2.5. If updates to the CMR's cost estimate exceed the Budget by more than fifteen percent (15%) for Design Development, ten percent (10%) for 65%

Construction Documents and five percent (5%) for 95% Construction Documents, A/E shall consult with TFC and CMA to identify potential design and/or Specification modifications that could result in the cost estimate being in compliance with the Budget. A/E shall incorporate Approved modifications into A/E's design documents and shall promptly submit such modified design documents to TFC without causing delay to the Project and without any cost to TFC.

2.2.6. Design Development Phase.

2.2.6.1. Upon receipt of the Conceptual Design Documents from the Master A/E, and upon receipt of Notice to Proceed from TFC, A/E shall prepare and deliver the design development phase documents to TFC for review and approval via the Owner Coordinated Document Review Process.

2.2.6.2. It is acknowledged and agreed that A/E may continue to develop the drawings at the risk of being required to make changes until a Design Development–TFC NOA is delivered by TFC.

2.2.6.3. A/E shall proceed to the Construction Document Phase once review comments and project cost estimates for the Design Development Phase are reconciled and TFC delivers a Notice of Authorization to proceed with Construction Documents.

2.2.6.4. All DD Documents must comply with all Laws and Regulations of all Governmental Authorities.

2.2.6.5. Such DD Documents shall be based upon reliable and accurate calculations that appropriately determine all architectural and engineering components of Phase 1 of the Project, and shall include, but not be limited to the following:

2.2.6.5.1. design criteria and/or verification of that provided for previous phases for all proposed clearing and grubbing, on-site and off-site drainage and erosion control, and for any other grade and subgrade Site preparation and erosion control required by any Governmental Authorities;

2.2.6.5.2. design criteria and/or verification of that provided for previous phases for connection to all proposed temporary and permanent on-site and off-site utilities;

2.2.6.5.3. design criteria for the proposed structural system, including the rationale for determinations, all design loads for floor, roof and lateral loads;

2.2.6.5.4. design criteria for proposed heating, ventilation and air conditioning (hereafter referred to as "HVAC") system and single line layout of conveyance systems;

2.2.6.5.5. design criteria for the proposed electrical system including reserve capacity;

2.2.6.5.6. copies of all manufacturers' documentation that illustrates the proposed materials, equipment and warranties to be specified for the Project; and

2.2.6.5.7. an evaluation of energy conservation alternatives and the filing of the Energy Conservation Design Standard Compliance Statement with the State Energy Conservation Office and the Texas Comptroller of Public Accounts.

2.2.6.6. Submission of all documents required by TDLR, as TFC's authorized agent, and obtain TDLR's determination of whether the Project is designed in compliance with applicable requirements of TDLR. A/E shall immediately deliver a copy of any determination of compliance or noncompliance by TDLR to TFC.

2.2.6.7. A/E shall proceed to develop the 65% Construction Documents once review comments and project cost estimates for Design Development are reconciled and TFC delivers a Notice of Authorization to proceed with development of the 65% Construction Documents.

2.2.7. Construction Documents Phase.

2.2.7.1. No later than the 65% Construction Documents–A/E Deadline, prepare and deliver the 65% Construction Documents to TFC for review and approval via the Owner Coordinated Document Review Process.

2.2.7.2. A/E shall proceed to develop the 95% Construction Documents once review comments and project cost estimates for the 65% Construction Documents are reconciled and TFC delivers a Notice of Authorization to proceed with development of the 95% Construction Documents.

2.2.7.3. No later than the 95% Construction Documents–A/E Deadline, prepare and deliver the 95% Construction Documents to TFC for review and approval via the Owner Coordinated Document Review Process.

2.2.7.4. A/E shall proceed to develop the 100% Construction Documents once review comments and project cost estimates for the 95% Construction Documents are reconciled and TFC delivers a Notice of Authorization to proceed with development of the 100% Construction Documents.

2.2.7.5. No later than the Construction Documents–100% A/E Deadline, A/E shall prepare and deliver to TFC:

2.2.7.5.1. the proposed one hundred percent (100%) complete Construction Documents; and

2.2.7.5.2. review of CMR's Construction Documents-100% cost estimate. If such estimate exceeds the Budget, A/E shall consult with TFC to identify further potential design and/or Specification modifications that could result in the estimate being in compliance with the Budget. Approved modifications to reduce the estimated construction cost of Phase 1 of the Project to within the Budget shall be incorporated by A/E into the Construction Documents at no cost to TFC and without delay to the Project.

2.2.7.6. Each of A/E's Deliverables shall be submitted electronically in a format acceptable to TFC, and shall be appropriately labeled to include identification of the software program (and version thereof) utilized for each Deliverable.

2.2.7.6.1. All Drawings shall be organized within the layering system in accordance with A/E Guidelines.

2.2.7.6.2. Layer format and names shall be in accordance with A/E Guidelines.

2.2.7.6.3. All electronic data shall include an organized indexing system and/or a table of contents sufficiently detailed as to each discrete subject matter so as to allow for easy identification and location of each file or page of information.

2.2.7.7. The construction of the Project will be divided into different Project Stages each with different dates for implementation and completion under separate Guaranteed Maximum Price contract amendments or separate contracts, which require Architect/Engineer's issuance of multiple Design Packages pursuant to Section 2.2.3.5.

2.2.7.8. A/E shall sign, seal and date, and shall cause the responsible architect(s) and engineer(s) to sign, seal and date, all documents, reports, Drawings and Specifications issued to TFC pursuant to the terms of this Agreement and in accordance with applicable Laws and Regulations. With the signing and sealing of the Construction Documents the A/E shall accept complete responsibility for these documents.

2.2.7.9. The Deliverables issued by A/E must comply with all Laws and Regulations.

2.2.7.9.1. All Drawings and Specifications must, in conspicuous text, expressly prohibit any electrical systems or equipment from being energized or otherwise activated without a minimum of twenty-four (24) hour advance notice to TFC.

2.2.7.9.2. A/E shall submit all documents required to secure approval of all Governmental Authorities. All requests for reimbursement for any direct

costs associated with submitting documents to such authorities and for permit fees shall be governed by Article IV of this Agreement.

2.2.7.10. No Construction Documents shall be issued, delivered, or released for any purpose without the prior written consent of TFC.

2.2.8. Contract Bidding and Award Phase. Upon receipt of an applicable written authorization to proceed, and only in such event, A/E shall prepare and deliver to TFC the following contract bidding and award phase services for the Project.

2.2.8.1. Unless otherwise instructed by TFC, A/E shall deliver three (3) sets of the approved Construction Documents to TFC, any additional copies of which shall be considered a Reimbursable Expense.

2.2.8.2. Throughout the course of design and construction of the Project, A/E shall provide TFC with continuous access to the BIM and shall transfer each BIM to TFC's server at Substantial Completion of the Project. At completion of 100% Construction Documents, A/E shall provide annotation files (or the equivalent thereof for the building information modeling software used) for TFC's review. At completion of each Project Stage, A/E shall provide annotation files (or the equivalent thereof for the building information modeling software used) for the record drawings to TFC.

2.2.8.3. Assist TFC in the bidding and award phase by delivering the following services:

2.2.8.3.1. prepare any addenda, amendments, and the like, to the solicitation documents which may become necessary;

2.2.8.3.2. attend all pre-bid meetings conducted by CMR;

and

2.2.8.3.3. consult with and advise TFC, CMR and CMA as to any bidder inquiries.

2.2.8.4. Attend and participate in the evaluation and scoring of all proposals in accordance with TFC processes and procedures, including, but not necessarily limited to, interviewing of bidders, which participation shall be at no additional cost to TFC and shall not constitute an Additional Service.

2.2.8.5. If the lowest acceptable proposal price, as determined by TFC in its absolute and sole discretion, exceeds the Budget and TFC does not amend the Budget, A/E shall consult with TFC and CMR, in order to identify further potential design and/or Specification modifications which could result in obtaining a proposal price that would be in compliance with the Budget. Approved modifications shall be incorporated into the Construction Documents and appropriate copies reissued at no cost to TFC.

2.2.8.6. In the event TFC elects to amend the Budget and allocate such additional funds as necessary to accommodate the lowest acceptable proposal and the Project proceeds, there shall be no increase in the amount of the Consideration.

2.2.8.7. In the event A/E receives any inquiries whatsoever from bidders or potential bidders regarding the Project, A/E must immediately refer such inquiries to TFC, Procurement Division (512) 463-0209. A/E is not authorized to provide any comments, answers or other similar responses to such inquiries. All inquiries must be immediately forwarded to TFC for response.

2.2.9. Construction Phase—General Administration of Construction Contract. A/E shall deliver the following management and administration of construction contract(s) services to TFC during the construction phase of the Project as is specified in the UGC and as follows.

2.2.9.1. Perform professional observation and review of the Work in order to determine that all elements and components of the Project are being timely constructed and installed in substantial compliance with the Construction Documents. Such observation and review shall include, at a minimum:

2.2.9.1.1. designate and provide an on-site representative for the duration of the construction of the Project who shall perform observations of all completed and in-progress Work on a weekly basis, or in such other frequency as mutually agreed upon to be appropriate for each phase of construction;

2.2.9.1.2. such observations shall include, but shall not be limited to, all functions applicable to professional inspections that are described in Texas Government Code, Sections 2166.351(3) and 2166.355 (West 2016);

2.2.9.1.3. no later than the RFI Response Deadline as established in the PMP, prepare and deliver an RFI Response for each RFI via the EPMS. If the subject of the RFI cannot be reasonably answered by this deadline, A/E shall so advise TFC and propose an alternative deadline and the basis for such proposal, the acceptance of which shall be in the sole discretion of TFC. A/E shall make reasonable efforts to answer CMR's questions and RFIs in the shortest timeframe possible in order to collaborate in the prosecution of CMR's Work (as defined in UGC, Section 1.48) on a schedule that recognizes that "TIME IS OF THE ESSENCE";

2.2.9.1.4. conduct timely contract management and administration activities as required herein by utilization of the EPMCS; and

2.2.9.1.5. timely review and deliver to TFC and CMR complete responses within the specified deadlines to the submittals described below. If the deadline cannot be met, A/E shall so advise TFC and CMR, and propose an alternative deadline and the basis for such proposal, the acceptance of which shall be within the sole discretion of TFC.

A/E shall make reasonable efforts to review submittals in the shortest timeframe possible to collaborate in the prosecution of CMR's Work on a schedule that recognizes that "TIME IS OF THE ESSENCE."

(14) calendar days after receipt; 2.2.9.1.5.1. submittals—within fourteen

five (5) calendar days after receipt; 2.2.9.1.5.2. Pay Applications—within

unilateral change orders-within five (5) days after receipt; and 2.2.9.1.5.3. proposed change orders and

2.2.9.1.5.4. certification for payment-each and every certification for payment issued by A/E shall constitute an express representation that based upon A/E's on-site observation(s) and an evaluation of CMR's Pay Application and A/E's knowledge and belief: (i) the construction has progressed to the point indicated in the Application for Payment, and in general conformity with the Contract Documents; and (ii) A/E has received and reviewed and evaluated all testing reports required by the Contract Documents up to the respective Pay Application. A/E's certification of payment for a discreet or partial completion of the Work does not relieve CMR of its obligation to fulfill all contractual obligations.

2.2.9.2. Prepare such amended or revised Drawings and/or Specifications as necessary to fully and accurately reflect any Approved changes.

2.2.9.2.1. deliver said amended or revised Drawings and/or Specifications to CMR and request a price proposal; and

2.2.9.2.2. thereafter, A/E shall review CMR's proposal and recommend approval or disapproval to TFC.

2.2.9.3. Timely update all Construction Documents as may be necessary to accurately reflect conditions resulting from approved Change Orders so as to enable timely delivery of complete and accurate Record Documents.

2.2.9.4. Deliver a Periodic Report to TFC for each observation and review of the Work. Such Periodic Reports must describe in reasonable detail the current status of the following:

2.2.9.4.1. the completed Work in relation to the Work Progress Schedule;

2.2.9.4.2. projected completion dates;

- subpart of the Work;
- 2.2.9.4.3. percentage of completion of each discrete
- discrepancies;
- 2.2.9.4.4. any existing or potential deficiencies and/or
- 2.2.9.4.5. the status of any revisions or Change Orders; and
- 2.2.9.4.6. the status of the Record Documents.

2.2.9.5. Subject to the provisions of UGC, Subsection 12.1.1, no later than the Substantial Completion Inspection Deadline, A/E shall conduct a Substantial Completion Inspection of the Work, while accompanied by the TFC Project Manager, TFC inspection staff, the CMA, the Master A/E and CMR, to determine whether said portion of the Work has achieved Substantial Completion.

2.2.9.5.1. In the event TFC, the CMA, the Master A/E and A/E conclude that the Work, or any portion thereof, has not been performed or completed in accordance with the Construction Documents, A/E shall prepare and deliver, no later than the Pre-Final Inspection Punchlist Deadline, a Pre-Final Inspection Punchlist to CMR with a copy to TFC.

2.2.9.5.1.1. A/E shall continue to perform the foregoing described service until TFC can issue an appropriate Certificate of Substantial Completion.

2.2.9.5.1.2. In the event that such continued service be required due to causes outside A/E's direct control (such as, CMR's errors in reporting readiness of the Work for Inspection; CMR prematurely requesting substantial completion inspection; significant deficiencies in the Work unexcused delays in the Work; untested or improper performance of systems; or similar failures performed by CMR or its agents), such service shall constitute an Additional Service.

2.2.9.5.2. In the event A/E, the CMA, the Master A/E, and TFC conclude that the Work, or a discrete and identified phase thereof, has been performed or completed in accordance with the Construction Documents so as to be determined to be substantially complete, TFC shall promptly issue an appropriate Certificate of Substantial Completion as to the completed Work, as provided in UGC, Paragraph 12.1.1.2, and A/E shall promptly take all such steps as are required by TDLR, as TFC's authorized agent, to ensure the Project is completed in compliance with applicable requirements of TDLR including, but not limited to, obtaining a passing inspection by A/E's Registered Accessibility Specialist. Any provision in the foregoing to the contrary notwithstanding, A/E shall not recommend the issuance of a Certificate of Substantial Completion if, in its reasonable opinion, A/E determines that any of the items to be contained in the Post-Substantial Completion Inspection Punchlist cannot or, in all reasonable likelihood will not be, satisfactorily completed within thirty (30) days of the date of the Substantial Completion Inspection Deadline.

2.2.9.6. Subject to the provisions of UGC, Subsection 12.1.2, and no later than the Final Inspection Deadline, A/E shall conduct a Final Inspection of the Work, while accompanied by the TFC Project Manager, CMA, the Master A/E, and CMR, to determine whether all of the Work for the entire Project has been fully completed in accordance with the Construction Documents.

2.2.9.6.1. In the event TFC, CMA, the Master A/E, and A/E conclude that any of the Pre-Final Inspection Punchlist items have not been corrected or completed in accordance with the Construction Documents, A/E shall prepare and deliver, no later than the Post-Final Inspection Punchlist Deadline, a Post-Final Inspection Punchlist to CMR with a copy to TFC.

2.2.9.6.1.1. A/E shall continue to perform the foregoing described service until TFC can issue a Certificate of Final Completion.

2.2.9.6.1.2. In the event that such continued service be required due to causes outside A/E's direct control (such as, CMR's errors in reporting readiness of the Work for Inspection; CMR prematurely requesting substantial completion inspection; significant deficiencies in the Work; unexcused delays in the Work; untested or improper performance of systems or similar failures performed by CMR or its agents), such service shall constitute an Additional Service.

2.2.9.6.2. In the event A/E, CMA, the Master A/E, and TFC conclude that all of the Work, or all of the Work in a respective discrete or identified phase, has been corrected or completed in accordance with the Construction Documents, and subject to the prior issuance of a Certificate of Substantial Completion, TFC, with A/E signature as appropriate, shall issue and deliver a Certificate of Final Completion to CMR.

2.2.9.6.2.1. Issuance of a Certificate of Substantial Completion is a condition precedent to CMR's right to issue notice that the Work will be ready for final inspection.

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

2.2.9.7. No later than the Close-out and Record Documents Deadline, and prior to A/E's delivery of the Application for Final Payment to TFC, A/E shall:

2.2.9.7.1. Obtain, review and inspect all Close-out Documents, guarantees, bonds and all other fiscal surety instruments, and all other documentation required of CMR by the Contract Documents to ensure full and complete compliance. Within five (5) days of such confirmation, A/E shall transmit the above-described documentation to TFC.

2.2.9.7.2. Furnish the Record Documents to TFC.

2.2.9.7.3. Furnish one (1) digital copy of all Construction Documents to TFC including the BIM Model and annotation files used to create the Construction Documents, in the format and version approved by TFC.

2.2.9.7.3.1. Each portable drive or disk shall be appropriately labeled to include identification of the software program (and version thereof) utilized.

2.2.9.7.3.2. Drawings shall be annotation files referencing the BIM and shall be organized within the layering system in accordance with A/E Guidelines.

2.2.9.7.3.3. Layer format and names shall be in accordance with A/E Guidelines.

2.2.9.7.3.4. All electronic data shall include an organized indexing system and/or a table of contents sufficiently detailed as to each discrete subject matter so as to allow for easy identification and location of each file or page of information.

2.2.9.8. Subject to the restrictions set out below, at such time that the Certificate of Final Completion has been issued, A/E shall promptly review and, if in proper form, approve the Application for Final Payment in accordance with the UGC, any Supplementary General Conditions, any Special Conditions, and the Construction Documents.

2.2.9.8.1. In order for an Application for Final Payment to be considered complete and subject to approval, CMR must submit a fully executed Final Payment checklist in such form as is prescribed by TFC to TFC.

2.2.9.8.2. No approval of an Application for Final Payment is valid and enforceable unless and until the foregoing subparagraph is fully satisfied.

2.2.9.9. In the event of any material conflict between the duties and responsibilities of A/E as set out in the UGC, any Supplementary General Conditions, any Special Conditions, A/E Guidelines, or in any other document referenced herein and incorporated for all purposes, and this Agreement, the duties and responsibilities specified in this Agreement shall control to the extent of such material conflict.

2.2.10. A/E Services During All Phases. A/E shall timely deliver the following services, as applicable, during all phases for which A/E is obligated to provide Professional Services to TFC.

2.2.10.1. Critically review and closely scrutinize all documents submitted by all third parties.

2.2.10.2. Thoroughly review and closely scrutinize the performance, schedules, and costs of CMR and all its subcontractors.

2.2.10.3. Critically review and evaluate CMR's proposed schedule and costs as relevant to each consultant's discipline.

2.2.10.4. Maintain work progress and products consistent with the schedules.

2.2.10.5. Provide supplemental information beyond that presented in a submission of documents which may be reasonably requested to assist cost estimating.

2.2.9.6. Promptly communicate with pertinent parties, including topics regarding information needs and responses to needs of other parties.

2.2.10.7. Actively participate in all meetings and/or teleconferences to bring the full measure of A/E's collective experience, expertise and recommendations to the Project as it pertains to the overall Project or to a specific discipline.

2.2.10.8. Prepare and deliver all meeting agendas and meeting minutes, field reports, and other similar documentation within one (1) week of the respective work or event, unless directed otherwise by TFC.

2.2.10.9. Answer questions and provide clarifications for CMR and its subcontractors to facilitate their thorough examination of all Drawings, Specifications and other documents authored by A/E for accuracy, intended completeness and constructability; and

2.2.10.10. Ensure that A/E Project Manager and any other representative of A/E whose presence is requested by TFC attend all meetings and participate in all conference calls that are scheduled by TFC.

2.2.11. Release of Electronic Files. A/E shall, as a part of its Services, provide or cause to be provided to CMR and its subcontractors, upon CMR's request, electronic access to such BIM data and electronic files comprising the Construction Documents as is reasonably necessary and appropriate to enable their use of such data and files in connection with the Project. A/E shall provide such access in an executed Acknowledgement of Data Use Protocols, form to be provided by TFC.

2.2.12. TFC Approvals. Any provisions in this Agreement to the contrary notwithstanding, all consents and/or approvals by TFC shall be in its sole and absolute discretion, and must be in writing.

2.2.12.1. No changes to: (i) the scope of the Professional Services; or (ii) the Consideration shall be valid or enforceable unless evidenced by a fully executed written amendment to this Agreement.

2.2.12.2. A/E is not authorized to commence providing any Professional Services to TFC or any Using Agency with respect to the Project unless and until an appropriate Notice to Proceed is delivered by TFC.

2.2.12.3. TFC, including by and through the TFC Project Manager, reserves the right to extend any of the deadlines set out above.

2.2.13. Inspections. TFC hereby reserves the right, if deemed appropriate by TFC in its sole discretion, to conduct reviews or inspections during the course of planning, pre-design, design, construction and commissioning of the Project, and to require A/E to participate therein. However, such participation shall not relieve A/E of any of its obligations arising pursuant to this Agreement. No inspections of the Project conducted by TFC shall reduce the level or extent of A/E's responsibilities arising pursuant to this Agreement. Neither the approval and/or final acceptance of a Project or any Deliverables, the payment of any Pay Application by TFC shall constitute, nor be deemed, a release of A/E's obligation to perform and timely deliver the Professional Services and any Additional Services in accordance with the Standard of Care pursuant to the terms of this Agreement. Owner anticipates engaging other independent professionals to provide peer reviews at the conclusion of the Schematic Design, Design Development and Construction Documents Phases for each Design Package issued by A/E. A/E shall incorporate modifications to its design documents resulting from design milestone reviews or any other time as directed by TFC, including any peer review comments that TFC directs to be incorporated at no additional cost to Owner.

III. TERM AND TERMINATION.

3.1. Duration. This Agreement shall be effective as of the Effective Date and shall terminate on December 31, 2022, unless extended by the parties by amendment to this Agreement or terminated earlier, as provided below.

3.2. Suspension, Default, and Termination.

3.2.1. Suspension by Owner for Convenience. Owner may at any time order A/E to suspend its services on the Project for the convenience of Owner. Any such suspension shall not terminate or void this Agreement.

3.2.2. Termination by Owner for Convenience. Owner shall have the right at any time and for any reason to terminate for convenience this Contract and any one or more tasks, in whole or in part, by giving written notice to A/E. Upon receipt of Owner's order or notice, A/E shall immediately discontinue services as directed therein, except as expressly directed otherwise therein. A/E shall thereafter do only such services and work as may be necessary to preserve and protect work already completed. In case of such termination, A/E shall be entitled to payment

only for services and work satisfactorily performed prior to termination and reasonably performed thereafter in closing out any task in accordance with such notice. The foregoing shall be the sole remedy available to A/E in the event of such termination by Owner. In no event shall A/E be entitled to payment of lost profits, lost opportunity or any damages relating to services not performed due to such termination. Owner's right to terminate as provided herein shall not be construed as affecting in any way the rights, duties or obligations of the parties should Owner terminate this Contract for cause upon A/E's breach or default.

3.2.3. Termination by Owner for Cause.

3.2.3.1. Owner may terminate the Contract if A/E, despite written notice from Owner, and the expiration of ten (10) days after the receipt of such notice:

3.2.3.1.1. refuses or fails to supply enough properly skilled personnel;

3.2.3.1.2. fails to make payment to A/E Personnel for services in accordance with the respective agreements between A/E and A/E Personnel;

3.2.3.1.3. disregards Applicable Law;

3.2.3.1.4. commits a substantial breach of any provision of this Agreement;

3.2.3.1.5. fails to furnish Owner, upon request, with assurances satisfactory to Owner evidencing A/E's ability to complete the Services in compliance with all the requirements of this Agreement; or

3.2.3.1.6. fails to proceed continuously and diligently with the Services, except as otherwise excused under this Agreement.

3.2.3.2. When any of the above reasons exist, Owner may, without prejudice to any other rights or remedies of Owner, which rights and remedies are expressly reserved herein, terminate the Agreement with A/E and: (i) take possession of all Work Product in the possession of A/E; (ii) accept assignment of subcontracts pursuant to this Agreement; and (iii) complete the Services by whatever reasonable method Owner may deem expedient.

3.2.3.3. In addition to the foregoing, if Owner at any time has reasonable grounds to believe that A/E is in default, or likely to default, in the performance of its obligations under this Agreement, Owner may request in writing, and A/E shall provide to Owner in writing within ten (10) days after receipt of Owner's request, adequate assurance of A/E's present and future ability to perform its obligations, failing in which A/E shall be deemed to be in material default of this Agreement. A/E's written response to such request shall include evidence sufficient to demonstrate A/E's ability to perform to the reasonable satisfaction of Owner. Owner's determination that A/E has failed to provide evidence sufficient and satisfactory to constitute

adequate assurance of its ability to perform hereunder shall not be subject to challenge if A/E has failed to cure, within the time permitted under Section 3.2.3.1, a condition of default specifically referenced in Owner's written demand to cure such condition of default.

3.2.3.4. If, in the event of a termination for cause, the unpaid balance of all compensation remaining to be earned by A/E under this Agreement exceeds the sum of the cost of finishing the Services, including compensation for the services and expenses of Owner and CMR that are made necessary by A/E's default, and any other damages incurred by Owner as a result thereof, and not expressly waived, such excess shall be paid to A/E. If such costs and damages exceed such unpaid balance, A/E shall be liable to pay the difference to Owner, which amount shall be immediately due and owing to Owner. This obligation for payment shall survive termination of this Agreement.

3.2.3.5. Upon determination by Court of competent jurisdiction that termination of A/E pursuant to this Section 3.2.3 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 3.2.2 and A/E's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth therein.

3.2.4. Selection of another A/E. In the event of any termination of this Contract by Owner, in whole or in part, A/E consents to Owner's selection of another to serve as A/E of Owner's choice to assist Owner in completing the Project. Upon termination for any reason whatsoever, however, A/E shall promptly deliver to Owner all information, including all electronic documents, in A/E's possession relating to the Design Program and the Project. A/E further agrees to cooperate and provide any further information requested by Owner in connection with the completion of A/E's obligations with respect to the Design Program and the Project.

3.2.5. No Payment for Unsatisfactory Work. Nothing contained in this Section 3.2 shall require Owner to pay for any services or work under the terms of this Agreement which are unsatisfactory or which are not submitted in compliance with the terms of this Agreement. Owner shall not be required to make any payments to A/E when A/E is in default under this Agreement, nor shall this Article constitute a waiver of any right, at law or at equity, which Owner may have if A/E is in default, including the right to: (i) terminate this Agreement; (ii) bring legal action for damages; or (iii) enforce specific performance of this Agreement. Nothing in this Agreement shall be construed as a waiver by Owner of its right to assert a claim for breach of contract with respect to any breach hereof, including any latent defect in A/E's Services, if the same was not actually discovered by Owner in sufficient time to report the same to A/E prior to expiration of the Contract Term or prior to TFC's termination of this Agreement for any reason.

IV. CONSIDERATION.

4.1. Contract Limit--Fees and Expenses.

4.1.1. Fixed Fee. In exchange for the proper performance and timely delivery of the Professional Services as specified by this Agreement, A/E shall be paid a fixed fee of Ten Million

Six Hundred Eighty Thousand and No/100 Dollars (\$10,680,000.00). A/E will not be compensated for any Professional Services performed or delivered by A/E prior to the Effective Date of this Agreement or after its termination. Such Fixed Fee shall be paid to A/E pursuant to the A/E's Fee Schedule and Staffing Plan, "Exhibit E."

4.1.2. Submission of Pay Applications or Invoices. No more frequently than once per month, A/E shall submit a Pay Application to TFC for services performed and reasonable and necessary costs and expenses incurred through the last day of the previous month. TFC agrees to pay A/E in accordance with Chapter 2251 of the Texas Government Code (West 2016), also known as the "Prompt Payment Act."

4.2. Proportional Payments. Payments shall be made to A/E monthly in proportion to the services performed. The compensation for services shall be at the cumulative percentages at the completion and acceptance of each phase of the Professional Services in accordance with the A/E's Fee Schedule and Staffing Plan, "Exhibit E."

4.3. Maximum Reimbursable Expenses. Reasonable lodging and traveling expenses shall be considered a Reimbursable Expense under this Agreement when professional and technical personnel of A/E are away from the cities in which they are permanently assigned and are conducting authorized business directly connected with this Agreement. For the purposes of this Agreement, no travel reimbursement shall be made for travel within 100 miles of the location identified as the principal place of business or branch office of A/E, except for overnight stays, which require prior TFC project manager approval. The maximum amount for each Reimbursable Expense for travel and lodging shall be the rates established by the Texas Comptroller of Public Accounts, and outlined in *Textravel*, <https://fmn.cpa.state.tx.us/fmn/travel/txtravel/index.php>, formerly known as the State of Texas Travel Allowance Guide for state employees. No Reimbursable Expenses shall exceed actual cost. In addition to those items specifically identified above as a Reimbursable Expense, permit fees and associated costs, certain other incidental direct expenses including, but not limited to, copying, telephone, data, and express mail services, and rental of special equipment or tools required in connection with provision of the Professional Services for the Project, may constitute a Reimbursable Expense; provided however, A/E must obtain the written approval of TFC prior to incurring the expense. Approval may be granted only under those limited circumstances wherein such costs are not considered normal or customary basic services under this Agreement. All requests for reimbursement must be accompanied by such documentation which, in the judgment of TFC, allows for complete substantiation of the costs incurred.

4.4. Notice of Depletion. Within seven (7) days of when the accumulated amount of Fees and Reimbursable Expenses reaches eighty percent (80%) of the maximum not-to-exceed contract amount(s), A/E shall deliver written notice thereof to TFC. Nothing herein shall be construed to require TFC to increase the approved maximum not-to-exceed contract amount(s) established pursuant to this Agreement.

4.5. Additional Services. Upon request by TFC for Additional Services, A/E shall prepare and submit a proposal for such Additional Services to TFC for approval. Additional Services shall

be performed at the Hourly Rates established by "Exhibit G." Any Additional Services performed or delivered by A/E prior to execution of the Agreement or amendment thereto, as applicable, cannot be compensated. The Additional Services Hourly Fee Rates established in "Exhibit G" may upon request of A/E be reviewed on a biennial basis to determine the appropriateness of any increases or decreases thereto for cost of living and merit adjustments. At least 10 days prior to seeking Owner's approval of any adjustment to any Additional Services Hourly Fee Rates to be applied to any A/E Personnel, A/E shall submit to Owner the qualifications, experience and performance evaluations of all such A/E Personnel who are the subject of a requested adjustment. A/E shall submit its proposal for such adjustments at least sixty (60) days in advance of such anniversary date for Owner's review. Owner's approval of such adjustments shall not be unreasonably withheld; provided, however, Owner may, as a condition of such approval, require A/E to submit to a wage study to be conducted by a qualified independent third party mutually acceptable to both parties, to confirm the appropriateness thereof. Owner and A/E shall share the cost of any such study. Owner shall be entitled to reduce any adjustment requested by A/E to such lesser amount as may be confirmed by such wage study to be reasonable. In no event shall Owner be required to approve a biennial cost of living adjustment that exceeds the amount of the average annual cost of living adjustment, if any, approved by TFC for TFC's employees for the calendar year in which such adjustment is sought.

4.5.1. Written Notice. In any such event, A/E shall deliver the written notice required above within forty-eight (48) hours of the commencement of an Owner's act of intentional interference, A/E's failure of which shall constitute, without further notice or action, a waiver of A/E's right to claim an adjustment of its fees for such act of intentional interference.

4.5.2. No Adjustment for Failure to Perform. In no event shall A/E's Fees be equitably adjusted for delays to the Design Program or Project which A/E caused or contributed to in any way by failing to perform its Services required hereunder in accordance with its Standard of Care.

4.6. Payments to Subcontractors. For all services rendered, A/E'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 A/E and Subcontractors.

4.7. Certification of Correctness. Each submission of a Pay Application shall constitute A/E's representation to TFC that the Services and reimbursable expenses reflected thereon have been fully rendered or incurred in accordance with this Contract, and that payment of the indicated amount has been earned by, and is properly due and payable to, A/E in accordance with this Contract. Notwithstanding the foregoing, the amount reflected on any Pay Application shall only be due and payable to A/E to the extent such payment has actually been earned by A/E in accordance with this Contract.

4.8. Right to Withhold Payment. Notwithstanding anything in this Contract to the contrary, TFC shall not be obligated to make, and may withhold interest free, any payment to A/E under this Contract if any one or more of the following three (3) conditions exist: (i) A/E is in default of any of its obligations under this Contract, and fails to commence to correct, and continuously and

diligently proceed to cure, such default within seventy-two (72) hours after receiving TFC's written notice of such default; (ii) A/E seeks payment for Services that were not performed under and in accordance with this Contract, in which case the amount of such payment may be withheld without notice; or (iii) A/E has failed to make promptly when due any payment to any A/E Personnel or other third party used by A/E to perform this Contract, and for which TFC has paid A/E, in which case payment equal to such amount may be withheld without notice. TFC's right to withhold payment hereunder is in addition to any and all legal and/or equitable remedies available to TFC under the law.

4.9. Final Payment. Prior to final payment to A/E, A/E shall furnish evidence satisfactory to TFC that there are no claims, obligations or liens outstanding in connection with its Services. Acceptance of final payment shall constitute a waiver of all claims by A/E for compensation for its Services.

4.10. Claims, Obligations, and Liens. Should there be any claim, obligation or lien asserted before or after final payment is made that arises from A/E's Services, A/E shall reimburse TFC for any costs and expenses, including attorneys' fees, costs and expenses, incurred by TFC in satisfying, discharging or defending against any such claim, obligation or lien, including any action brought or judgment recovered, provided TFC is making payments or has made payments to A/E in accordance with the terms of this Agreement.

4.11. Damages and Failure to Perform. Should A/E or its consultants cause damage to the Projects, or fail to perform or otherwise be in default under the terms of this Agreement, TFC shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect TFC from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

V. ACKNOWLEDGEMENT, COVENANTS, AND AGREEMENTS.

5.1. Acknowledgement, Covenants, and Agreements of TFC. TFC acknowledges, covenants, and agrees, as follows.

5.1.1. TFC Deliverables to A/E. TFC shall provide A/E a copy of, or reasonable access to any documents in the possession of TFC related to the Site, including the Project Analysis, or the equivalent thereof. Provided, however, A/E shall not be entitled to rely on the accuracy or completeness of any such documents.

5.1.2. TFC Obligations to A/E. TFC shall:

5.1.2.1. assist A/E in obtaining such access to the Sites as is reasonably necessary to enable A/E to provide the Professional Services;

5.1.2.2. designate the TFC Project Manager(s); and

5.1.2.3. provide intermediate reviews of the Work Product of A/E as necessary to allow A/E to proceed with delivery of the Professional Services in a timely manner.

5.1.2.4. Notwithstanding any provision in this Agreement to the contrary, TFC shall not be responsible for the adequacy of any planning, performance or design criteria for the Projects. TFC shall be entitled to rely upon A/E to determine the adequacy, accuracy and completeness of all Services rendered for the Project, including the adequacy of any planning, performance or design criteria related to the Services. A/E shall also be responsible for determining the adequacy, accuracy and completeness of any information furnished to A/E by or on behalf of TFC and used by A/E in rendering its Services.

5.2. Acknowledgements, Covenants, and Agreements of A/E. A/E acknowledges, covenants, and agrees as follows.

5.2.1. Timely Delivery of Conforming Services. A/E will, subject to Force Majeure events, as defined in Section 11.12 below, timely provide the Professional Services in conformity with, and as specified in, this Agreement, the UGC, the Supplementary General Conditions, any Special Conditions, and in the Construction Documents.

5.2.2. Modifications. Modifications to any Deliverables which are made necessary by the errors and/or omissions of A/E or any A/E Personnel, or any additional costs or damage to the Projects arising therefrom, shall be resolved and covered to TFC's satisfaction by A/E at its sole cost and expense.

5.2.3. Limitation of Authority. A/E agrees that the TFC Project Manager(s) shall not have any express or implied authority to vary or otherwise amend the terms and conditions of this Agreement in any way, or waive strict compliance with the terms and conditions of this Agreement, except as to the deadlines set out in the Professional Services Schedule, "Exhibit H." Any deviation from a deadline must be Approved by the TFC Project Manager(s) in writing issued prior to the expiration of any such deadline.

5.2.4. A/E Safety. (a) A/E and all A/E 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 A/E and Subcontractors shall be trained in accordance with Chapter 29, Occupational Safety and Health Regulations. (b) A/E and Subcontractors shall inform the TFC Project Manager(s) of their Hazardous Electrical Energy Control, Lockout/Tag-out Procedure. A/E's procedure must meet or exceed TFC's procedure as determined by the TFC Project Manager(s). (c) Work 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, A/E must follow OSHA requirements as detailed in OSHA Regulations 1910.331 – 1910.399. TFC, in its sole discretion, may at any time order in writing a temporary stand-down of A/E's performance of the Services ("Safety Stand-Down Order") as a result of any one or more Safety Incidents, whereupon A/E shall immediately direct all A/E Personnel to stop all Services while A/E conducts a comprehensive review of A/E'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 A/E 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 A/E determines to be necessary and appropriate to fulfill its obligations in accordance with this Agreement. Upon receipt of TFC's Safety Stand-Down Order, A/E 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 A/E 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, A/E shall, in the exercise of A/E's reasonable judgment, propose the date by which A/E will complete all corrective action. Services shall resume only upon TFC's delivery of further written notice to A/E withdrawing TFC's Safety Stand-Down Order, which notice of withdrawal shall not be issued until TFC is reasonably satisfied that A/E has sufficiently implemented all appropriate corrective action as necessary to enable A/E to safely resume Services, fulfill its contractual obligations set forth in this Agreement, and thereby avoid recurrence of the Safety Incident(s). A/E shall not be entitled to an adjustment of A/E's Compensation, or the Professional Services Schedule, as the result of TFC's issuance of a Safety Stand-Down Order. If A/E fails to implement the corrective action in the manner proposed by A/E and determined by TFC to be reasonably acceptable, such failure shall be deemed a material breach of this Agreement and TFC may, without further notice, terminate this Agreement for cause. In responding to any Safety Stand-Down Order, A/E's evaluation of the need for, and its plan of, corrective action shall be undertaken as an independent contractor, pursuant to Section 11.3, and nothing herein shall be construed or interpreted to mean that TFC has assumed or agreed to assume any duty of care to A/E Personnel, or to provide guidance or instruction as to A/E's means and methods for managing safety as required by this Agreement. Any action taken by TFC hereunder to enforce TFC's rights to require A/E to fulfill its safety obligations under this Agreement shall be deemed to be undertaken solely for the purpose of fulfilling TFC's contractual expectation of results in terms of delivery of the Project without causing injury or harm to persons or property.

5.2.5. Cooperation. All project managers, employees, and associated Subcontractors of A/E shall cooperate with and assist each other and all other contractors and design professionals retained by TFC.

5.2.6. Cooperation by A/E.

5.2.6.1. A/E agrees to conduct all of its services under this Agreement by and through appropriate communications with the TFC Project Manager(s). No work, installation or other services shall be undertaken by A/E except with the prior written authorization of the TFC Project Manager(s).

5.2.6.2. A/E understands and agrees that work, installation or any other service performed without the prior written authorization of the TFC Project Manager(s) is work outside the scope of this Agreement and shall be performed exclusively at A/E's risk.

5.2.6.3. A/E 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(s). TFC may request that A/E replace unsatisfactory personnel, which request shall not be unreasonably denied.

5.2.6.4. A/E 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, A/E shall report the concern to the TFC Project Manager(s).

5.2.6.5. A/E shall bear all costs associated with the replacement of any of its Key Personnel identified in List of A/E's Key Personnel, "Exhibit D."

5.2.7. E-Verify. By entering into this Agreement, A/E certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, 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 Agreement; and (ii) all persons (including subcontractors) assigned by A/E to perform work or Services pursuant to the Agreement, within the United States of America. A/E 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 A/E, and A/E's Subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Agreement may be immediately terminated, at the discretion of TFC, and at no fault to TFC, with no prior notification. A/E shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Agreement. For persons not eligible for E-Verify screening, A/E (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.

5.2.8. Identification of Project Manager and All Subcontractors. A/E Project Manager identified in the initial List of A/E's Key Personnel, "Exhibit D," will supervise the efforts of A/E to timely provide TFC with the Services.

5.2.8.1. A/E Project Manager must be committed to the Project on a full-time basis. TFC reserves the right to Approve the appointment of A/E Project Manager and to demand that A/E Project Manager, and any of A/E'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 (iv) any other like reasons.