

5.2.8.2. A/E Project Manager and Subcontractors identified in the List shall not be removed or replaced by A/E, nor shall any other Subcontractors be engaged by A/E, unless prior written consent is obtained from TFC, which consent shall not be unreasonably withheld, conditioned, or delayed.

5.2.9. Buy Texas. If A/E is authorized to make purchases under this Agreement, A/E certifies that A/E will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Texas Government Code, Chapter 2155 (West 2016).

5.2.10. No Assumption. No Approvals or acceptances by, or on behalf of, TFC shall be deemed to be an assumption of any responsibility by TFC for any defect, error or omission in the Deliverables or Professional Services.

5.2.11. No Guaranty. A/E does not control or guarantee the performance of any service provider not under the supervision or control of A/E, provided however, A/E shall promptly notify TFC of any observation of a service provider's failure to perform their duties and responsibilities in accordance with the Construction Documents, the Work Progress Schedule, and applicable Laws and Regulations, and shall recommend to TFC candidate measure(s) to correct such failures.

5.2.12. Debts or Delinquencies Owed to the State. Any payment due under this Agreement may be withheld and applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support pursuant to Texas Government Code, Section 403.055 (West 2013 & Supp. 2015).

5.2.13. General and Criminal Background Check.

5.2.13.1. A/E represents and warrants that neither A/E nor any of A/E's employees, have been convicted of a felony criminal offense, or of a crime involving moral turpitude, or that, if such a conviction has occurred, A/E has fully advised TFC in writing as to the facts and circumstances surrounding the conviction(s).

5.2.13.2. All of A/E's employees and Subcontractors that will perform any Professional Services on-site at a state-owned property may be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by A/E.

5.2.14. Equal Opportunity. A/E shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief. A/E shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion, or

transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. A/E shall post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination subsection. A/E shall include the above provisions in all Subcontracts pertaining to the Professional Services.

5.2.15. No Advertising. A/E shall not advertise that it is doing business with TFC or use this Agreement as any sort of marketing or sales tool without the prior written consent of TFC.

5.2.16. No Warranties by TFC. A/E acknowledges that any and all tests, maps, reports, and drawings and any other documentation (hereinafter referred to collectively as "Reports") in the possession of TFC that reflect or depict any Site boundaries, recorded easements, topography, utility locations, and other Site conditions and/or restrictions which may impact A/E's prosecution of the Services or work were prepared solely for the benefit of TFC, and that A/E shall have no right to rely upon such and that any reliance thereon shall be at A/E's own risk. TFC HEREBY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE ABOVE-MENTIONED REPORTS.

5.2.17. No Outsourcing. All Services under this Agreement shall be performed in the principal offices of A/E and A/E Personnel. If A/E's offices or the offices of any A/E Personnel exist out of the State of Texas, Services shall be performed in offices within Texas in so much as proper expertise and timeliness can be accomplished. Services performed outside the State of Texas shall be limited to offices and personnel located in the United States. Outsourcing or subcontracting outside the United States shall not be permitted unless Approved.

5.2.18. Prohibition Against Boycotting Israel. In accordance with Section 2270.002 of the Texas Government Code, by signature hereon, A/E certifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

VI. WARRANTIES AND REPRESENTATIONS BY A/E.

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

6.1.1. Compliance with All Laws. A/E shall procure and maintain for the duration of this Agreement any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by A/E to provide the goods or services required by this Agreement. A/E will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. A/E agrees to be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Agreement. As part of its delivery of the Professional Services, A/E

shall make itself familiar with and at all times shall observe and comply with all Laws and Regulations of all Governmental Authorities that in any manner affect performance under this Agreement.

6.1.2. Immigration Reform; Compliance with Laws and Regulations. The Immigration Reform and Control Act of 1986 and 1990 requires that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors and subcontractors who contract with the State. A/E shall not place any employee of A/E at a worksite, nor shall A/E permit any employee, nor any Subcontractor, to perform any Professional Services on behalf of or for the benefit of the State, without first confirming said employee's authorization to lawfully work in the United States.

6.1.2.1. A/E warrants that A/E: (i) maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with applicable law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to A/E's senior management; and (iv) is without knowledge of any fact that would render any employee or Subcontractor ineligible to legally work in the United States.

6.1.2.2. A/E further acknowledges, agrees, and warrants that A/E: (i) has complied, and shall at all times during the term of the Agreement comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement ("DHS-ICE"), including, without limitation, the completion and maintenance of the Form I-9 for each of A/E's employees; and (iii) has responded, and shall at all times during the term of the Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Agreement, A/E shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by TFC or any state agency of A/E or any of its employees.

6.1.2.3. A/E warrants and represents that all Services shall be performed in compliance with all Laws and Regulations, including any laws and regulations dealing with employer-employee relations, including, as amended, the "Fair Labor Standards Act" of 1938, the "Walsh-Healy Act," and "Nondiscrimination in Employment," Executive Order No. 11246 of September 24, 1964. All codes, laws and regulations required to be incorporated in a contract of this character are hereby incorporated herein by reference, including but not limited to all applicable requirements of the Texas Department of Licensing and Regulation. Compliance with the above shall include the adoption of all programs, making of all certifications and filing of all reports as required thereby. All terms required by any of the foregoing are hereby incorporated

herein by reference. A/E shall execute and deliver to TFC such documents as may be required to effect or evidence compliance.

6.1.2.4. A/E further warrants and represents that in carrying out its duties and responsibilities under this Agreement, it will neither undertake nor cause, nor permit to be undertaken, any activity which either: (i) is illegal under any Laws and Regulations, decrees, or rules, in effect in the United States, or (ii) would have the effect of causing TFC to be in violation of any laws, decrees, rules, or regulations in effect in the United States. A/E shall protect and indemnify TFC and TFC's officers and agents against any claim or liability arising from or based on any violation of the same.

6.1.2.5. A/E acknowledges, agrees, and warrants that all Subcontractors permitted by it to perform Professional Services will be required to agree to these same terms as a condition to being awarded any Subcontract for such work.

6.1.3. Proficiency in Systems. A/E is proficient in the use of CAD systems, BIM systems, and the EPMCS utilized by TFC.

6.1.4. Standard of Care. A/E shall, in the performance of the Services, comply with the standard of care described herein. Notwithstanding anything to the contrary contained in this Agreement, Owner and A/E agree and acknowledge that Owner has entered into this Agreement in reliance on A/E's special and unique abilities to perform its obligations hereunder. A/E accepts that, by this Agreement, a relationship of trust and confidence is hereby established between it and Owner. A/E understands the complexity involved in this type of construction and the necessity of coordination of the performance of its Services with the Project Team. In addition to the foregoing, and in addition to the rights and remedies otherwise existing under this Agreement, at law or in equity, A/E will perform, or cause to be performed, all Services expeditiously, and in no event later than is required to conform, as applicable, to the Professional Services Schedule, and shall do so with that degree of professional skill and care practiced by similar firms, using similar collaborative project planning methods, and having industry leading knowledge and skill engaged in providing similar services for major construction projects of comparable value in the United States under the same or similar circumstances. A/E will furnish efficient business and contract administration and perform the Services in such manner as to provide Owner the best value. It is the intention of the parties that A/E shall, at all times, act in Owner's best interests with respect to the performance of the Services and the management of all aspects of the Project. A/E shall, at all times, exercise exclusive direction and control, and shall be responsible for proper supervision of all its A/E Personnel, Subcontractors, and subconsultants while present on the Worksite and otherwise. The standard of care required hereunder shall not, however, be deemed to alter or expand A/E's common law duty to Owner with respect to liability for, or the duty to indemnify, defend or hold Owner harmless under Article XI with respect to claims or liability for bodily injury or property damage, for which the standard of care hereunder shall be deemed and construed to be no greater than that imposed upon A/E by common law. Also, the standard of care required hereunder shall not be deemed to alter or expand A/E's status as an independent contractor.

6.1.5. Warranty of Deliverables. All Deliverables shall be: (i) completed and delivered in a timely manner and in a manner consistent with standards in the applicable trade, profession, or industry; (ii) conform to or exceed the specifications set forth in this Agreement; and (iii) be fit for ordinary use, of good quality, and with no material defects; and (iv) comply with all applicable Laws and Regulations. A/E has carefully reviewed the Professional Services Schedule, Exhibit H, and, based upon the professional judgment of its experienced and qualified architectural and engineering professionals, A/E represents and warrants that it is able to complete the Services within the time provided in Professional Services Schedule, in conformity with TFC's requirements.

6.1.6. Familiarity with Sites. A/E represents that it: (i) has thoroughly reviewed all documentation provided by TFC or otherwise available to A/E for the Projects and the Sites; (ii) has visited the Sites for the Projects; and (iii) has thoroughly familiarized itself with the local conditions under which the Services are to be performed. A/E has considered all of the foregoing in agreeing to be bound to perform the Services for the fixed fee established in Section 4.1.1 of this Agreement.

6.1.7. No Material Change in Qualifications or Responses to Request for Qualifications. A/E represents that all information contained in A/E's responses to TFC's Request for Qualifications, RFQ No. 303-7-01647 dated June 9, 2017, including but not limited to A/E's statements and representations as to its history, experience, capabilities, litigation disclosure, financial information, and other qualifications are accurate and complete, and no material change in circumstances has occurred that would cause A/E's responses to be untrue or materially different than what was originally stated.

6.1.8. Financial Ability and Insurance. A/E represents that it is financially solvent and possesses or is able to engage sufficient working capital to complete the Services as required by this Agreement. A/E's insurance policies are and will be maintained in the form required under TFC's Requirements of Insurance (Article X).

6.1.9. General and Professional Licensing. A/E represents that A/E, including A/E Personnel, and its employees and representatives hold in its and their names all licenses required to render the Services, and they are duly qualified, licensed, registered and authorized as required by Laws and Regulations to perform the Services required hereunder.

6.1.10. Execution of Contract Duly Authorized. A/E represents that A/E's execution and adoption of this Contract has been duly authorized, approved and/or ratified, and A/E has confirmed the authority of the person executing this Contract on behalf of A/E to bind A/E to this Contract.

6.1.11. Royalties and Licenses to Use Intellectual Property. A/E represents that it will pay all royalties and license fees due in connection with the Services. A/E warrants that neither the Services nor use of A/E's Work Product will infringe any patent or other proprietary right. Should A/E, in consultation with TFC, determine that A/E's proprietary information, data or systems will be used on the Projects, TFC agrees to enter into a licensing agreement as necessary

to enable TFC to utilize A/E's proprietary information, data or system, in connection with the Projects, which license agreement shall be non-exclusive, perpetual, and not require further expenditure by TFC or its representatives for such purposes.

6.1.12. Warranty of Services. A/E represents the Services rendered hereunder shall be performed in accordance with A/E's Standard of Care, all Laws and Regulations, and the requirements of this Contract. A/E shall re-perform any Services or Additional Services in accordance with this Contract as required to correct any error, omission, defect or deficiency arising within a period of two (2) years following the completion of all Services required under this Contract to the extent any such error, omission, defect or deficiency arises as a result of A/E's failure to perform the Services or Additional Services hereunder in accordance with A/E's Standard of Care.

6.1.13. Additional Warranties. In performing its Professional Services for the Projects, A/E shall be bound by, and comply with, any warranties, representations, and/or promises of additional services included in A/E's response to the Request for Qualifications, dated August 3, 2017, incorporated herein for all purposes as "Exhibit M," but only to the extent any such warranties, representations, and/or promises of additional services are made therein.

6.1.14. Eligibility. A/E certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate pursuant to Texas Government Code, Section 2155.004(b) (West 2016).

6.1.15. Family Code Disclosure of Ownership. Pursuant to the requirements of the Texas Family Code, Section 231.006 (West 2014 & Supp. 2015), regarding delinquent child support, the individual or business entity named in this Agreement is not ineligible to receive payment under this Agreement and, if applicable, A/E has provided, prior to its execution of this Agreement, the name and social security number of each such person (sole proprietors, firm owners, partners, or shareholders) holding at least twenty-five percent (25%) ownership of the business entity entering into this Agreement. A/E acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

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

6.1.17. Disclosure of Former State Executives. Pursuant to Texas Government Code, Section 669.003 (West 2012 & Supp. 2015) relating to contracting with an executive of a state agency, no Person who, in the past four (4) years served as an executive of TFC or any other state agency was involved with or has any interest in this Agreement or any Contract resulting from this Agreement. If A/E employs or has used the services of a former executive head of TFC or any other state agency, then A/E has provided the name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with A/E, and the date of employment with A/E.

6.1.18. Certification Concerning Restricted Employment for Former State Officers or Employees Under Government Code § 572.069. CMR certifies that it has not employed and will not employ a former TFC or state officer who participated in a procurement or contract negotiation for TFC involving CMR within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose service or employment ceased on or after September 1, 2015.

6.1.19 Financial Interest/Gifts. (i) Pursuant to Texas Government Code Sections 572.051 (West 2012 & Supp. 2015) and 2255.001 (West 2016) and Texas Penal Code Section 36.09 (West 2011 & Supp. 2015), A/E has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract. (ii) Pursuant to Texas Government Code Chapter 573 (West 2012 & Supp. 2015) and Section 2254.032 (West 2016), if applicable, A/E certifies that A/E knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in A/E's company or corporation. A/E further certifies that no partner, corporation, or unincorporated association which employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which A/E will be dealing on behalf of TFC.

6.1.20. Prior Employment. A/E knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in A/E's firm or corporation. A/E further certifies that no partner, corporation, or unincorporated association that employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which A/E will be dealing on behalf of TFC pursuant to the Texas Government Code, Chapter 573 (West 2012 & Supp. 2015) and Section 2254.032 (West 2016). Furthermore, A/E certifies and agrees that if it employs any former employee of TFC, such employee will perform no work in connection with this Contract during the twelve (12) month period immediately following the employee's last date of employment at TFC.

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

VII. STATE FUNDING.

7.1. State Funding. This Agreement shall not be construed as creating any debt on behalf of the State of Texas and/or TFC in violation of TEX. CONST. art. III, § 49. In compliance with TEX. CONST. art. VIII, § 6, it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Agreement may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination. Furthermore, any damages due under this Agreement should not exceed the amount of funds appropriated for payment under this Agreement, but not yet paid to A/E, for the fiscal year budget in existence at the time of the breach.

VIII. COPYRIGHTS AND TRADEMARKS.

8.1. Copyrights. A/E agrees that all Deliverables provided pursuant to this Agreement are subject to the rights of TFC in effect on the date of execution of this Agreement. These rights include the right to use, duplicate and disclose such subject matter and data, in whole or in part, in any manner for alterations, additions, remodels or maintenance; and to have others do so including production of Deliverables in response to a public information request pursuant to Texas Government Code, Chapter 552 (West 2012 & Supp. 2015). If the Deliverables produced by A/E are subject to copyright protection, A/E hereby grants to TFC a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such and to authorize others to do so. A/E shall include appropriate provisions to achieve the purpose of this condition in all Subcontracts entered into that produce information subject to copyright protection.

8.1.1. Disclaimers. All such Deliverables furnished by A/E pursuant to this Agreement shall be considered instruments of its services in respect to the Project. It is understood that A/E does not represent such Deliverables to be suitable for reuse on any other study or for any other purpose(s). If A/E, at TFC's request and authorization, verifies or adapts A/E's Deliverables for TFC's use on another study, A/E shall be compensated for redesign or new design, bidding, and construction administration services.

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

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

8.2. No Use of Name or Trademark. A/E agrees not to make any written use of or reference to TFC's name or registered or unregistered trademarks for any marketing, public relations, advertising, display or other business purpose or make any use of TFC's facilities for any activity

related to the express business purposes and interests of TFC pursuant to this Agreement, without the prior written consent of TFC, which consent may be withheld or granted in TFC's sole discretion.

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

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

9.2. Inspections and Audits. A/E agrees that all relevant records related to this Agreement or any Work Product under this Agreement, including practices of its Subcontractors, shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of A/E where such records may be found, with or without notice by the Texas State Auditor's Office ("SAO"), the contracting agency or its contracted examiners, or the Office of the Texas Attorney General, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All Subcontracts shall reflect the requirements of this section. In addition, pursuant to Texas Government Code, Section 2262.154 (West 2016), the SAO may conduct an audit or investigation of any entity receiving funds under this Agreement, including direct payments to A/E and indirect payments under a Subcontract to this Agreement; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation.

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

9.4. Confidentiality Provisions Applicable to A/E.

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

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

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

9.4.2.2. Computer software of any type or form in any stage of actual or anticipated research and development, including, but not limited to, programs and program modules, routines and subroutines, processes, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches, and system designs.

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

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

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

9.4.2.6. Any information obtained from TFC regarding its pursuit or negotiation of agreements with any potential “Contracting Person” regarding a potential “Qualifying Project” as those terms are defined in Texas Government Code, Section 2267.001 (West 2016), as the same may be amended from time to time, including, but not necessarily limited to, the names of the Contracting Person, including their representatives, (collectively, “Business Customers”); the parties to and substance of any agreements between TFC and said Business

Customers; services and data provided, or to be provided, by or to said Business Customers; and the type, quantity and specifications of products and services purchased, leased, licensed or received, or to be purchased, leased, licensed or received, by Business Customers.

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

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

9.4.3.1. Both during and forever after the performance of its due diligence investigation, A/E will not disclose Confidential Information to any Person or entity other than as necessary in carrying out its duties on behalf of TFC and/or due diligence investigation, without first obtaining TFC’s prior, written consent, and A/E will take all reasonable precautions to prevent inadvertent disclosure of such Confidential Information. This prohibition against A/E’s disclosure of Confidential Information includes, but is not limited to, disclosing the fact that any similarity exists between the Confidential Information and information independently developed by another Person or entity, and A/E understands that such similarity does not excuse A/E from abiding by its covenant or other obligations pursuant to this Agreement.

9.4.3.2. Both during and after the conduct of its due diligence investigation, A/E will not use, copy, or transfer Confidential Information other than as necessary in carrying out its duties on behalf of TFC and/or due diligence investigation, without first obtaining prior written consent of TFC, and will take all reasonable precautions to prevent inadvertent use, copying, or transfer of such Confidential Information. This prohibition against A/E’s use, copying, or transfer of Confidential Information includes, but is not limited to, selling, licensing or otherwise exploiting, directly or indirectly, any products or services (including software in any form) that embody or are derived from Confidential Information.

9.4.3.3. A/E agrees not to make any written use of or reference to TFC’s name or registered or unregistered trademarks (or any names under which TFC conducts business or operations) for any marketing, public relations, advertising, display or other business purpose or make any use of TFC’s facilities for any activity related to the express business purposes and interests of TFC pursuant to this Agreement, without the prior written consent of TFC, which consent may be withheld or granted in TFC’s sole and absolute discretion.

9.4.3.4. A/E agrees not to utilize, either directly or indirectly, any Confidential Information in order to facilitate or create direct business relationships with Business Customers of TFC.

9.4.4. Open Records Request or Similar Requests for Information. In the event that A/E receives a request to disclose all or any part of the Confidential Information under the terms of the Texas Public Information Act, a subpoena or other order issued by a court of competent jurisdiction or by another governmental agency, A/E shall: (i) notify TFC of the existence, terms, and circumstances surrounding such a request within one (1) business day of the receipt of the request; (ii) notify the entity requesting the information that such a request for information should be submitted to TFC, not A/E; (iii) provide the entity requesting the information the contact information of TFC's public information coordinator; and (iv) forward all responsive information to TFC within two (2) business days of the receipt of the request.

9.5. Confidentiality Provisions Applicable to TFC. Subject to the provisions of Section 9.6 below, TFC shall keep confidential all information, in whatever form, produced, prepared, or observed by A/E to the extent that such information is: (i) confidential by law; (ii) marked or designated "confidential," or words to that effect, in a font size no smaller than 14 point, by A/E; or (iii) information that TFC is otherwise required to keep confidential by this Agreement.

9.6. Public Records. Notwithstanding any provisions of this Agreement to the contrary, A/E understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 (West 2012 & Supp. 2015). If contacted by TFC, A/E will cooperate with TFC in the production of documents responsive to the request. A/E agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. A/E may request that TFC seek an opinion from the Office of the Texas Attorney General. However, the final decision whether to seek a ruling from the Office of the Texas Attorney General will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, A/E will notify TFC's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Agreement and/or any amendment to this Agreement. This Agreement and/or any amendment to this Agreement and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. A/E agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Agreement, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, A/E is required to make any information created or exchanged with the State pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

X. INSURANCE.

10.1. Insurance Requirements. All persons who enter into an agreement to provide professional services (hereinafter referred to as "Agreement"), including, but not limited to, professional engineering services and/or professional architectural services, as defined in Texas Government Code, Chapter 2254, Subchapter A (West 2016) with the State of Texas, by and

through TFC, must comply with the insurance requirements established hereunder before A/E is authorized to commence providing such professional services.

10.2. Required Insurance Coverages. The required insurance coverages for this Agreement are as set forth in this Article X.

10.3. TFC a Third-Party Beneficiary. No provision of this Agreement shall confer or be construed to create any right or benefit in any third party, including any A/E Personnel or any other entity which has assumed any of A/E's obligations hereunder, or in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third-party beneficiary of the Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto. A/E shall be solely responsible for all contractual obligations to A/E Personnel, and shall pay for the Services and Work of its A/E Personnel in accordance with Laws and Regulations. A/E shall provide that Owner, TFC, may, at its election, assume the status of a third party beneficiary to any contracts, subcontracts, consulting agreements, purchase orders and other agreements executed by A/E in connection with this Agreement and/or the Projects, which election may be exercised as to any such agreement by TFC's issuance of written notice of such election to the other party or parties to such agreement.

10.4. Required Insurance Coverages No Effect On Indemnifications. The insurance and insurance limits required herein shall not be deemed as a limitation on A/E's liability under the indemnifications granted to TFC.

10.5. No Warranty That Insurance Limits Will Be Adequate to Fully Protect A/E. The insurance requirements set out herein shall not be interpreted as any representation or warranty that the insurance coverage and limits will necessarily be adequate to fully protect A/E.

10.6. Duty to Purchase Lines of Insurance; A/E's Expense. Commencing on the Effective Date, the Architect/Engineer ("A/E") shall, at its own expense, purchase, maintain and keep in full force and effect such lines of insurance coverage as will protect A/E from claims and to protect Owner and the Owner Group from claims (other than claims asserting professional liability of the Owner and Owner Group or workers' compensation claims of their employees), which may arise out of or result from A/E's Services or Work, regardless of whether the Services or Work are performed by A/E, A/E Personnel, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable (including at a minimum the following minimum insurance coverages and limits; provided, however, if other Contract Documents require insurance coverage or minimum limits that are greater than those listed below, the minimum limits in the other Contract Documents shall control and shall be provided by A/E). For purposes of this provision, the term "Owner Group" means the Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711, its officials, directors, employees, representatives, and volunteers.

10.7. A/E's Duty to Review Its Insurance. A/E represents and warrants it has carefully reviewed its insurance program with its legal and risk advisors and has determined its insurance policies comply with the insurance requirements in this Agreement, and further acknowledges a continuing obligation to ensure its insurance policies remain compliant herewith. A/E shall submit

true and complete copies of A/E's policies of insurance in electronic form by emailing true and complete copies of such policies to TFC's outside counsel, Richard L. Reed and Matthew R. Talley of Coats/Rose, P.E., at rreed@coatsrose.com and mtalley@coatsrose.com. The true and complete copies of all applicable insurance policies shall be submitted in a timely manner, as no contract will be executed without the receipt, review, negotiation, and TFC acceptance of the submitted policies. The policies shall include therewith a letter for each policy provided by A/E's broker, agent, or its applicable insurance carrier representative for each policy, certifying that the electronic copies of the policies as furnished are true and correct copies. Owner's review of A/E's policies of insurance shall in no way excuse A/E from any of the requirements set forth herein. In the event Owner enters into contract with A/E before any such deficiencies are resolved, Owner does not waive, but explicitly reserves, the right to bring, after (i) the occurrence of any loss or damage for which insurance is required hereunder, or (ii) after the denial of a claim for coverage for such loss or damage, an action or Claim against A/E to recover directly from A/E any damages, including attorney's fees and other costs, Owner incurs as a result of A/E's failure to secure and maintain the insurance required hereunder. A/E acknowledges and agrees that any period of limitations shall not begin to run or, alternatively, shall be tolled until the time of the later of such occurrence or denial.

10.8. Statutory Worker's Compensation and Employer's Liability Insurance. Statutory Worker's Compensation and Employer's Liability Insurance with minimum limits of not less than indicated below. A/E shall require Subcontractors to provide Workmen's Compensation and Employer's Liability Insurance with the same minimum limits. The policy must be in the name of A/E and contain an endorsement naming Owner as the Alternate Employer.

10.8.1. A/E's Certification. By execution of the Agreement, A/E thereby certifies, pursuant to Texas Labor Code, Section 406.096(a), that A/E provides workers' compensation and employers' liability insurance for all employees employed on this public project with limits of not less than those required below.

10.8.2. Subcontractor's Certification. As per Texas Labor Code, Section 406.096(b), A/E shall require each Subcontractor to certify in writing to A/E that said Subcontractor provides workers' compensation and employers' liability insurance for all of Subcontractor's employees employed on this public project. A/E shall forward said certifications to Owner within ten (10) days of the Effective Date of the Agreement.

10.8.3. Other States Endorsement. The policy must include an Other States Endorsement to include the State of Texas if A/E's business is domiciled outside the State of Texas. Required Limits of Coverage – Statutory limits, with Employer's Liability Coverage as follows:

Bodily Injury by Accident	\$1,000,000.00
Bodily Injury by Disease Each Employee	\$1,000,000.00
Bodily Injury by Disease Policy Limit	\$1,000,000.00

10.9. Commercial General Liability (“CGL”) Insurance. CGL Insurance with minimum limits of coverage not less than those indicated below, written on the most current commercially available edition of the ISO CG 00 01 coverage form, and shall include Owner Group as additional insureds on its CGL and Excess Liability policies on a combination of unmodified ISO endorsements CG 20 10 10 01 and CG 20 37 10 01, or manuscripted endorsements identical thereto. Such policy shall contain no exclusions, limitations, endorsements or policy forms unacceptable to Owner, including but not limited to the following coverage exclusions and limitations:

10.9.1. Liability. Liability assumed by A/E under a written agreement, including any contractual liability limitation endorsement restricting coverage to only liability that would exist in the absence of a contract, such as the ISO CG 21 39 or its equivalent, or any amendment of insured contract definition endorsement such as the ISO CG 24 26 or its equivalent;

10.9.2. Hazard Endorsement. Explosion, collapse, underground property damage, blasting, blowouts, cratering, or the like, including any Explosion, Collapse And Underground Property Damage Hazard endorsement such as the ISO CG 21 42 or ISO CG 21 43 endorsements, or their equivalent;

10.9.3. Cross-Liability. Cross-liability on claims between any insureds, other than claims between named insureds;

10.9.4. Independent Contractors. Injury to independent contractors and employees of independent contractors;

10.9.5. Damage by Subcontractors. Any exclusion relating to damage to work performed by Subcontractors on behalf of A/E such as the ISO CG 22 94 or ISO CG 22 95, or their equivalent;

10.9.6. Business Classification. Any type of classification or business description limitation endorsement;

10.9.7. Construction Defects. Any type of endorsement excluding coverage for construction defects in the completed operations phase;

10.9.8. Employer’s Liability. Any type of endorsement modifying the employer’s liability exclusion;

10.9.9. Habitation/Residence. Any type of habitational or residential exclusion;

10.9.10. Punitive Damages. Any type of punitive, exemplary or multiplied damages exclusion; or

10.9.11. Subsidence. Any type of subsidence exclusion if A/E is engaged in any type of earth movement work, including but not limited to soil compaction, fill, or installation of storm or sewer drains.

10.9.12. CGL Minimum Coverages. The CGL policy shall at a minimum include the following coverages:

10.9.12.1. Bodily injury and Property damage on an “Occurrence” basis;

10.9.12.2. Premises & Operations Liability;

10.9.12.3. Products/Completed Operations Liability (to be maintained for the later of ten years after Substantial Completion or until expiration of the statute of repose);

10.9.12.4. Personal and Advertising Injury Liability;

10.9.12.5. Electronic Data Liability coverage under an endorsement equal to ISO CG 04 37 with a minimum sublimit of liability equal to the minimum amount required hereunder for the CGL policy; and

10.9.12.6. The policy shall include ISO endorsement CG 2503, Designated Construction Projects General Aggregate Limit, or its equivalent. Minimum CGL limits of coverage required:

Each Occurrence	\$2,000,000.00
General Aggregate	\$4,000,000.00
Products & Completed Operations Aggregate	\$4,000,000.00
Personal and Advertising Injury	\$2,000,000.00

If the limits of coverage required above are below the actual limits of coverage in A/E’s primary commercial liability insurance policy, the above required limits of coverage shall be deemed to be automatically increased to the amount of such higher actual limits to avoid a gap in coverage that would preclude coverage under the excess/umbrella policy for failure of the underlying policy to exhaust its policy limits.

10.10. Business Automobile Insurance. Business Automobile Insurance with the limits of coverage shown below to cover damages because of bodily injury or property damages caused by an accident and resulting from the ownership, maintenance or use of: (i) any auto, including owned, hired and non-owned autos; and (ii) any mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws.

Combined Single Limit Bodily Injury & Property Damage	\$1,000,000.00
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10.11. Excess liability Insurance. Excess Liability Insurance over Employers’ Liability, CGL, Commercial Automobile Liability Policies, with the limits shown below and with coverage that is primary and non-contributory to any other insurance (primary, umbrella, contingent or excess) maintained by the Owner Group, following form over and affording coverage no less broad than the coverage in such underlying policies, including but not limited to: (i) additional insured status

for the Owner Group; (ii) designated construction project(s) general aggregate limit; (iii) waiver of subrogation; and (iv) notice of cancellation.

Excess Liability Insurance (Per Occurrence)	\$10,000,000.00
Excess Liability Insurance (General Aggregate)	\$10,000,000.00

10.12 Contractor's Pollution Liability Insurance. Contractor's Pollution Liability Insurance (stand-alone policy or included as a coverage part with a dedicated limit of liability in the professional liability policy), having the limits of coverage shown below, providing occurrence based coverage for all claims, liabilities, damages, costs, fees, and expenses of any kind or character, including but not limited to claims for bodily injury or death, property damage, environmental or natural resource damage, and all civil fines, fees, civil assessments or civil penalties or punitive, exemplary or multiplied damages assessed by any governmental department, agency, commission or court other than fines, penalties, punitive, exemplary or multiplied damages, or injunctive relief based upon or arising out of any "insured's" knowing, willful or deliberate noncompliance with any statute, regulation, ordinance or administrative complaint, arising out of any Pollution Condition(s) (as defined below) that is in any way related to A/E's or A/E Personnel's operations, actions or inactions, or completed operations associated with any work or operations performed by A/E or A/E Personnel at the Worksite. If coverage is written on a Claims Made & Reported Policy form, the policy retroactive date for prior acts coverage shall be no later than the Contract Effective Date. The pollution liability policy shall be continuously maintained for a period of 10 years after completion of the project or termination of the agreement, whichever occurs later; A/E's purchase of an extended discovery period or an extended reporting period will not be sufficient to comply with A/E's obligations hereunder. Such insurance shall name the Owner Group as Additional Insureds.

The Pollution Liability policy shall provide coverage for "sudden and accidental" and gradual occurrences arising from the work performed under this Contract. The Business Automobile Liability policy shall either be endorsed to provide coverage under the ISO CA9948 endorsement (Broadened Pollution Liability Coverage) and Motor Carrier Endorsement (MCS-90), or A/E's Contractor's Pollution Liability policy shall be endorsed to provide transportation coverage beyond the boundaries of the job site, if A/E's activities involve hauling excavated spoil. The Contractor's Pollution Liability policy shall also include coverage for:

10.12.1. Full Scope of Operations. The full scope of A/E's operations (on-going and completed), as described in the Agreement.

10.12.2. Pollutants. Losses arising from pollutants, including but not limited to fungus, bacteria, biological substances, mold, microbial matter, lead, silica and contaminated drywall.

10.12.3. Third-Party Liability. Third party liability for bodily injury, property damage, clean up expenses, and defense costs arising from A/E's operations.

10.12.4. Diminution of Value. Diminution of value and natural resources damages.

10.12.5. Contractual Liability. Contractual liability.

10.12.6. Disposal Sites. Claims arising from A/E's use of any owned or non-owned disposal sites arising out of A/E's activities in connection with the Agreement.

10.12.7. Bodily Injury. Bodily injury to include physical injury, sickness, disease, death, mental anguish, medical monitoring and emotional distress sustained by any person.

10.12.8. Investigation or Adjustment Costs. All costs that are related to or that arise out of or from the investigation or adjustment of any claim or in connection with any court, arbitration, mediation, state administrative hearing, or other proceeding of any kind, including attorney's fees, expert witness fees, costs, charges and expenses of any kind or character, that arise out of or that are related to a Pollution Condition(s).

10.12.9. Minimum Occurrence Period. Coverage under this policy shall include a 7-day minimum occurrence period for emergency response costs.

10.12.10. Prohibited Exclusions. The Pollution Liability insurance policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from:

10.12.10.1. insured vs. insured actions (however, an exclusion for claims made between insureds within the same economic family is acceptable);

10.12.10.2. impaired property that has not been physically injured;

10.12.10.3. materials supplied or handled by the named insured; any exclusionary language pertaining to materials supplied by the insured is subject to Owner's review and approval;

10.12.10.4. property damage to the work performed by a contractor;

10.12.10.5. faulty workmanship as it relates to clean up costs;

10.12.10.6. punitive, exemplary or multiplied damages;

10.12.10.7. work performed by subcontractors; or

10.12.10.8. contractual liability incurred as a result of an injury to an employee of the insured.

"Pollution Condition(s)" means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, sewage, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, mold, silt, sedimentation, low-level radioactive material and waste materials into or upon land, the atmosphere or any watercourse or

such insurance with other insurance to ensure that A/E has available at all times the coverage required hereunder.

10.16. Subrogation. A/E's workers' compensation, employers' liability, commercial automobile liability, CGL, excess liability, professional liability and pollution liability insurance policies shall be endorsed to waive all rights of subrogation in favor of the Owner Group. With respect to all such policies, A/E waives any and all rights of recovery or subrogation against the Owner Group.

10.17. Additional Insureds. The Owner Group shall be included as additional insureds without limitation on all policies required herein (except workers' compensation, employers' liability and professional liability policies), under the form of an additional insured endorsement providing the maximum protection to Owner allowed by applicable law, except as otherwise expressly stated herein. A/E represents and warrants that:

10.17.1. Maximum Extent Permitted. A/E's policies of liability insurance, including A/E's commercial general liability, commercial automobile liability, and excess liability insurance policies have been endorsed to cover the Owner Group as additional insureds to the maximum extent permitted by applicable law, or as otherwise set forth herein, with respect to liability arising out of Work performed by or for A/E, including ongoing and completed operations in connection with this Contract (and such coverage provides for the protection of each insured against claims of liability by another insured under a separation of insureds clause).

10.17.2. Third Parties. Such policies of insurance have also been endorsed to cover as an additional insured any third party to the extent required by the Contract Documents.

10.17.3. Indemnified Party. Such endorsements provide as to each additional insured, coverage to the limits of each such policy for at least each Claim that is no less broad than the obligations of A/E to indemnify, defend and hold harmless the additional insured as an Indemnified Party under the Contract.

10.17.4. Original Policies. Access to the originals of the certified copies of required insurance policies will be provided to Owner for review upon request.

10.17.5. Attachments. Attached hereto are true and correct copies of the following:

10.17.5.1. current certificates of insurance describing each of the policies of insurance required hereunder; and

10.17.5.2. all policy endorsements required hereunder.

10.18. Notification. All policies shall obligate the insurer to notify the Texas Facilities Commission (Attn: Legal Services Division), P.O. Box 13047, Austin, Texas 78711, of any: (i) non-renewal; (ii) cancellation; or (iii) material changes, in writing, at least 30 days prior to any

such non-renewal, cancellation or change. All policies shall require at least ten (10) days' notice of cancellation to Owner in the event of non-payment of premiums by A/E.

10.18.1. "Material Change" means any of the following changes to the Policy during the term of the Policy:

10.18.1.1. a change in the policy period;

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

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

10.18.1.4. an increase of the amount of any self-insured retention(s).

A/E shall not cause or permit its insurance to be canceled, reduced, restricted, limited, or invalidated.

10.19. Insurance Carriers. All A/E's insurance shall be issued by insurance carriers authorized to do business in Texas at the time the policy is issued (and at all times during the term of this Agreement) and rated by A.M. Best Company as A-VII or better, confirmed by one or more insurance certificates conforming to the following requirements:

10.19.1. Accord Form. Certificates of insurance shall be prepared on an Acord 25 (2010/05) form, or any later edition of this form.

10.19.2. Certificate Holder. Certificates shall designate Owner as certificate holder, together with Owner's mailing address.

10.19.3. Name of Insured. The named insured's name must match A/E's name as shown in this Agreement.

10.19.4. List of Insurance Companies. Certificates shall list each insurance company producing each form of coverage, together with the applicable policy number and policy date.

10.19.5. Contact Information of Issuing Producer. Certificates shall include the name, address, phone number, fax number and email address of the issuing producer, and the signature of the authorized representative of the producer.

10.19.6. Additional Insured Endorsements. Certificates for all applicable policies shall attach copies of all applicable additional insured endorsements.

10.19.7. Deductibles. All deductibles and self-insured retentions shall be disclosed on the certificate, and shall be paid by, assumed by, for the account of, and at A/E's sole risk without any right of reimbursement. Except for Professional Liability Insurance as required by

Section 10.13, above, no deductible or self-insured retention shall exceed \$150,000.00 without prior written approval of Owner, except as otherwise specified herein. The deductible for Professional Liability Insurance shall not exceed \$1,000,000.00. Except for Professional Liability Insurance, if A/E elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding \$150,000.00, A/E shall be obligated to grant Owner all rights against A/E to the same extent as if A/E had maintained the insurance required hereunder with a commercial insurer, including but not limited to additional insured status, (as to liability policies other than Professional Liability Insurance and Workers' Compensation Insurance) primary and non-contributory liability, waivers of rights of recovery, other insurance clauses, and any other extensions of coverage required herein. A/E shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the same extent all of the foregoing would have been covered had A/E maintained the insurance required hereunder with a commercial insurer.

10.19.8. General Aggregate Limit. Certificates of applicable policies shall disclose any designated construction project(s) general aggregate limit (Owner reserves the right to require notice of replenishment and placement of supplemental coverage if any aggregate limit is exhausted during the applicable policy period).

10.19.9. Primary and Non-Contributory Endorsements. Certificates shall attach all primary and non-contributory endorsements required herein.

10.19.10. Waivers of Subrogation. Certificates shall attach waivers of subrogation applicable to all coverages required herein.

10.19.11. Notice of Cancellation Terms. Certificates shall attach copies of all notice of cancellation terms from all policies required herein.

10.19.12. Project Names. Name(s) of the Project(s) as described in this Contract shall be listed in the certificate.

10.19.13. Pollution Liability and Professional Liability Policies. For Pollution Liability and Professional Liability policies, include in writing on the certificate the coverage form under which the respective line of coverage is written – either:

10.19.13.1. claims-made form; if the coverage form declared on the Certificate is the Claims-made form, the "Retroactive-date" for this line of coverage must also be included on the Certificate as well; or

10.19.13.2. occurrence basis – no additional wording required.

10.19.14. Project and Contract Number(s). Owner's Project/Contract number(s) along with its descriptor caption must be included in the Description of Operations section located in the bottom half of the certificate forms.

10.19.15. Certificate Holder. Owner Group shall be shown as the certificate holder in the certificate holder section located in the bottom half of the certificate form as follows:

Texas Facilities Commission
Attn: Legal Services Division
1711 San Jacinto Boulevard, Room 400
Austin, TX 78701

10.19.16. Distribution of Completed Certificates. Completed certificates shall be distributed by A/E and shall be provided to TFC upon execution of this Contract and upon each renewal, replenishment, or supplementation of the coverage, thereunder, and certificates, the originals for which shall be sent, as follows:

by Mail to: Texas Facilities Commission
Attention: Insurance Analyst
P O BOX 13047
Austin, TX 78711-3047

by E-Mail to: Carol.Palermo@tfc.state.tx.us

10.20. "Claims-Made" Policy Forms. With respect to any coverage maintained on a "claims-made" policy form, A/E shall maintain such coverage for a minimum of ten (10) years after Substantial Completion of the Project or termination of the Agreement, whichever occurs later. Coverage under any such policy form shall include a retroactive date based on the effective date of contract for the first performance of professional services for the Project. A/E's purchase of an extended discovery period or an extended reporting period on a "claims-made" policy will not be sufficient to comply with A/E's obligations hereunder.

10.21. Insurance Required to Commence Services. A/E shall not commence Services under this Contract until A/E has obtained all required insurance and until such insurance has been accepted by Owner's Approval. Owner's approval of A/E's insurance shall not relieve or decrease the liability of A/E hereunder. Owner shall have no duty to pay or perform under this Agreement until all certificates of insurance and required insurance policies have been confirmed by Owner's advisors to comply with the requirements set forth herein. A/E's failure to fulfill these insurance requirements shall not be a basis for any adjustment to A/E's compensation or schedule. Owner reserves the right to terminate this Agreement for convenience without any expense or liability in the event A/E fails to secure all insurance required herein within ten (10) days of A/E's execution of the Agreement.

10.22. Failure to Obtain, Maintain, or Renew Insurance. If A/E fails to timely obtain, maintain or renew the insurance required herein and to provide Owner with acceptable evidence thereof, Owner shall have the right, but not the obligation, to, among all other available remedies at law and in equity: (1) procure such insurance and reduce the amount of this Contract (or any other agreement between Owner and A/E) by the cost thereof; and/or (2) deem as a material breach of this Contract A/E's failure to do so. Within five (5) calendar days of any cancellation or non-

renewal of any required line of insurance coverage, A/E shall provide Owner a replacement certificate of insurance with all applicable endorsements included therewith. Owner shall have the right, in its sole discretion, to suspend A/E's performance or terminate this Contract should there be a lapse in coverage at any time during this Contract. In addition to any other remedies available to Owner, Owner shall have the right, upon A/E's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, to withhold any payment(s) which become due to A/E hereunder (or under any other agreement between Owner and A/E) until A/E demonstrates compliance with the insurance requirements of the Contract. At Owner's discretion, A/E may be disqualified from eligibility to participate in any other or future projects with Owner for failure to comply with the insurance requirements herein.

10.23. A/E's Obligations. Nothing herein shall reduce or alter any obligation of A/E to indemnify, defend or hold harmless the Indemnified Parties identified in the Contract. A/E's obligations for loss or damage arising out of A/E's Services and Work or operations are not limited to the types or amounts of insurance set forth herein. Losses not covered by the insurance required hereunder shall be paid by A/E.

10.24. No Attorney's Fees. To the extent Applicable Law allows recovery of attorney's fees in any action or proceeding commenced to enforce the rights of any member of Owner Group as an additional insured under this Contract, A/E agrees to pay Owner as the prevailing party in any such action, in addition to any other relief granted, the actual reasonable attorney fees Owner has paid or is obligated to pay, and all costs and expenses to enforce such rights, not merely recoverable costs. This provision is independent and severable from any other provision of this Contract and shall be enforceable as a separate agreement.

10.25. Compliance. Owner shall not be under any duty to advise A/E in the event that A/E's insurance is not in compliance with the Contract. A/E shall require all A/E Personnel to carry the types and limits of insurance coverage A/E determines to be necessary and appropriate to protect Owner and A/E from the risk of loss, taking into consideration the scope of services and work performed by each A/E Personnel. Excepting only Workers' Compensation and Professional Liability insurance policies, A/E shall cause all A/E Personnel to include Owner as an additional insured under each policy of insurance maintained by A/E Personnel. A/E will require evidence of this insurance and additional insured status to be provided by all A/E Personnel prior to their commencement of any work or services, or entering onto any Site in connection with the Project, and copies of this evidence shall be provided to Owner by A/E.

10.26. Deductibles. A/E is responsible for all deductibles and any self-insured retentions under all lines of insurance coverage required by this Agreement.

10.27. Policy Limits. The stated policy limits of each line of insurance coverage required herein are minimum only and it shall be A/E's responsibility to determine what policy limits in excess of such minimum limits are adequate, and the length of time each line of insurance coverage shall be maintained beyond any lengths of time set forth herein; insurance policy limits are not a limit of A/E's liability. The insurance requirements set out herein shall not be interpreted as any representation or warranty that the required insurance coverages and limits will necessarily be

adequate to fully protect A/E. Unless otherwise set forth herein, A/E shall not cause or permit any required insurance to be cancelled or to lapse prior to the expiration of all common law, statutory and contractual warranty periods.

10.28. Erosion of Aggregate Limits. A/E shall provide Owner with thirty (30) days written notice of erosion of any aggregate limits below the minimum amounts required by the Agreement.

10.29. Review. Owner reserves the right to review the insurance requirements and to require deletion, revision, and/or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulations that are binding upon Owner, A/E, or the underwriter) on any such policies when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, or the claims history of the industry and/or of A/E, provided however, such modifications must be commercially available to A/E. Owner shall make an equitable adjustment to the Contract Sum for any additional cost resulting therefrom.

10.30. Covenants. A/E covenants and agrees that: (i) the failure of Owner to demand certificates of insurance, or proof of compliance with the insurance requirement herein, or failure of Owner to identify a deficiency in any policy required hereunder will not be construed as a waiver of A/E's obligation to maintain the insurance required under this Agreement; (ii) the insurance required under this Agreement does not represent that coverage and limits will necessarily be adequate to protect A/E, nor shall the limits of coverage stated herein be deemed a limitation of A/E's liability to Owner in this Agreement; (iii) and A/E may meet the required insurance coverages and limits with any combination of primary and umbrella/excess liability insurance.

10.31. Release and Waiver. A/E hereby waives all rights of recovery and releases, and shall cause its subconsultants and subcontractors to release, the Owner Group from any and all claims or causes of action whatsoever which A/E and/or its subconsultants or subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by A/E and/or its subconsultants or subcontractors pursuant to the Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING RELEASE AND WAIVER SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER GROUP.

XI. MISCELLANEOUS PROVISIONS.

11.1 INDEMNIFICATION.

11.1.1. ACTS OR OMISSIONS. A/E SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS TFC AND THE STATE OF TEXAS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES,

AND/OR DESIGNEES FROM ANY AND ALL LIABILITY AND DAMAGES ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF A/E OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE AGREEMENT. THESE REQUIREMENTS SHALL SURVIVE THE TERM OR TERMINATION OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO TFC. THE DEFENSE SHALL BE COORDINATED BY A/E WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

11.1.2. INFRINGEMENTS. A/E SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH OR ARISING FROM ANY WORK PRODUCT, INCLUDING DRAWINGS, SPECIFICATIONS, DOCUMENTS AND ENGINEERING CRITERIA SUCH AS METHODS, PROCESSES, TECHNIQUES OR PROCEDURES, PROVIDED OR FURNISHED BY A/E TO TFC IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF A/E PURSUANT TO THIS AGREEMENT. A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. A/E SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY A/E WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. A/E SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (i) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED; (ii) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT A/E'S WRITTEN APPROVAL; (iii) ANY MODIFICATIONS MADE TO THE PRODUCT BY A/E PURSUANT TO TFC'S SPECIFIC INSTRUCTIONS; (iv) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TFC; OR (v) ANY USE OF THE PRODUCT OR SERVICE BY TFC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT. IF A/E BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES A/E WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, A/E MAY (OR IN THE CASE OF AN

INJUNCTION AGAINST TFC, SHALL), AT A/E'S SOLE OPTION AND EXPENSE: (i) PROCURE FOR TFC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE; OR (ii) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TFC'S USE IS NON-INFRINGEMENT.

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

11.1.4. Notice to TFC. In the event A/E becomes aware of any claim that may be subject to the above-described indemnification, A/E shall notify TFC of such claim within five (5) business days of becoming aware.

11.1.5. Settlement Authority. No settlement of any such claim shall be made by A/E without TFC's prior written approval.

11.2. Historically Underutilized Businesses ("HUBs"). In accordance with state law, it is TFC's policy to assist HUBs, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling A/E's obligations with TFC. If A/E subcontracts with others for some or all of the services to be

performed under this Agreement, A/E shall comply with all HUB requirements pursuant to Chapter 2161 of the Texas Government Code (West 2016). When required, A/E shall submit an updated HUB Subcontracting Plan, a digital copy of the form for which is incorporated herein by reference for all purposes in PDF on the Exhibits CD, and named therein as "Exhibit N." A/E shall provide the HUB program of TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the HUB Subcontracting Plan PAR, a digital copy of the form for which is incorporated herein by reference for all purposes in PDF on the Exhibits CD, and named therein as "Exhibit O."

11.3. Relationship of the Parties. A/E is associated with TFC only for the purposes and to the extent specified in this Agreement, and with respect to performance of the contracted services pursuant to this Agreement, A/E is and shall be an independent contractor. Subject only to the terms of this Agreement, A/E shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. A/E agrees that TFC shall be entitled to have confidence in and rely upon A/E to undertake the rendering of Services in accordance with this Contract for and on behalf of TFC, and at all times to act in TFC's best interests with respect to the performance of the Services required hereunder. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of A/E or any other party. A/E shall be solely responsible for, and TFC shall have no obligation with respect to: (i) withholding of income taxes, FICA, or any other taxes or fees; (ii) industrial or workers' compensation insurance coverage; (iii) participation in any group insurance plans available to employees of the State of Texas; (iv) participation or contributions by the State to the State Employees Retirement System; (v) accumulation of vacation leave or sick leave; or (vi) unemployment compensation coverage provided by the State.

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

11.5. Drug Free Work Place. A/E, A/E's employees and all Subcontractors shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law No. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to

implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and A/E, A/E's employees, and all Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

11.6. No Smoking. All facilities where work is to be performed are nonsmoking buildings. A/E's employees and Subcontractors are prohibited from smoking in all areas except in areas designated for smoking.

11.7. Notices. All notices, demands and requests required in this Agreement (hereinafter referred to as "Notices") must be in writing and shall be deemed to have been properly delivered and received: (i) three (3) business days after deposit in a regularly maintained receptacle for the United States Postal Service, certified mail, return receipt requested with adequate postage prepaid; or (ii) one (1) business day after deposit with Federal Express or other comparable overnight delivery system for overnight delivery with all costs prepaid. Electronic copies of all Notices shall also be sent via electronic mail to the e-mail address(es) listed below; provided, no notice shall be deemed effective notice if only delivered by electronic mail. All Notices hereunder shall be addressed as follows:

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

With a copy to: Texas Facilities Commission
Attention: John S. Raff, Deputy Executive Director
1711 San Jacinto Boulevard, Suite 400
Austin, Texas 78701
Email: john.raff@tfc.state.tx.us

If to A/E: HKS, Inc.
Attention: Jess Corrigan, AIA, Partner, Senior Vice President
350 North Saint Paul Street, Suite 100
Dallas, Texas 75201
Phone: (214) 969-3397
E-Mail: jcorrigan@hksinc.com

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

11.8. Name and Organizational Changes. A/E must provide TFC with written notification of all name changes and organizational changes relating to A/E including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change. A/E, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Contract. If the change entails personnel changes for personnel performing the

responsibilities of the Contract for A/E, A/E shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Contract and A/E shall supply the requested information within five (5) working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of A/E or successor entity, as applicable, to maintain its status as a party to this Contract. TFC may terminate the Contract due to any change to A/E that materially alters A/E's ability to perform under the Contract.

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

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

11.11. Proper Authority. The parties hereto represent and warrant that the Person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement. A/E acknowledges that this Agreement is effective only for the period of time specified in the Agreement.

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

breakdowns, or floods, earthquakes, hurricanes, or any other natural disaster or governmental actions.

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

11.12.2. Extent and Duration. If possible, the notice shall set forth the extent and duration thereof.

11.12.3. Due Diligence. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. If however, despite the exercise of due diligence, a party impacted by a Force Majeure event is unable to resume performance for more than thirty (30) consecutive days, TFC may terminate this Agreement immediately for convenience pursuant to Section 3.2.2. Changes in the schedule or in the design or scope of the Project as a result of any Force Majeure which affect the cost of A/E's services under this Agreement require a written amendment to this Agreement.

11.13. Dispute Resolution. Claims, disputes, and other matters in question arising out of or relating to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institutions of legal or equitable proceedings by either party. Failure to follow the dispute resolution process below shall result in any claim filed by A/E in a court of law having jurisdiction over the claim to be summarily dismissed. Subject to Texas Government Code, Section 2260.002 (West 2016), the dispute resolution process provided for in Chapter 2260 of the Texas Government Code (West 2016) shall be used by the parties to attempt to resolve all disputes arising under this Agreement. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005 (West 2011 & Supp. 2015), the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) (West 2016) and Texas Civil Practice and Remedies Code, Section 114.002 (West 2011 & Supp. 2015) shall be governed by the following dispute resolution process:

11.13.1. Claims for Breach of Contract and Counterclaims.

11.13.1.1. A/E may make a claim against TFC for breach of a contract between TFC and SSE. TFC may assert a counterclaim against A/E.

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

11.13.1.3. The notice must state with particularity: (i) the nature of the alleged breach; (ii) the amount A/E seeks as damages; and (iii) the legal theory of recovery.

11.13.1.4. TFC must assert, in a writing delivered to A/E, any counterclaim not later than the sixtieth (60th) day after the date of notice of a claim under Section 11.13.1.2 above.

11.13.2. Damages.

11.13.2.1. The total amount of money recoverable on a claim for breach of contract under this Section may not, after deducting the amount specified in Section 11.13.2.2 below, exceed an amount equal to the sum of:

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

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

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

11.13.2.2. Any amount owed the unit of state government for work not performed under a contract or in substantial compliance with its terms shall be deducted from the amount in Section 11.13.2.1 above.

11.13.2.3. Any award of damages under this Agreement may not include:

11.13.2.3.1. consequential or similar damages, except delays or labor-related expenses described by Section 11.13.2.1.3 above;

11.13.2.3.2. exemplary damages;

11.13.2.3.3. any damages based on an unjust enrichment theory;

11.13.2.3.4. attorney's fees; or

11.13.2.3.5. home office overhead.

11.13.3. Negotiation.

11.13.3.1. TFC's general counsel shall examine the claim and any counterclaim and negotiate with A/E in an effort to resolve them. The negotiation must begin no later than one hundred twenty (120) days after the date the claim is received.

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

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

11.13.4. Mediation.

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

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

11.13.5. Adjudication. On or after the two hundred seventieth (270th) day following the date the claim is filed with TFC, unless the parties agree in writing to an extension of time, A/E may adjudicate any claim in accordance with and to the extent permitted under the Texas Civil Practice and Remedies Code, Chapter 114 (West 2011 & Supp. 2015) or the Texas Government Code, Chapter 2260 (West 2016) only after both parties have completed mediation of the claim in question.

11.13.6. Payment of Claims.

11.13.6.1. In accordance with the Texas Civil Practice and Remedies Code, Section 114.011, TFC may pay a claim resolved under Section 11.13 only from money appropriated to it for payment of contract claims or for payment of the contract that is the subject of the claim. If money previously appropriated for payment of contract claims or payment of the contract is insufficient to pay the claim or settlement, the balance of the claim may be paid only from money appropriated by the legislature for payment of the claim.

11.13.6.2. Chapter 304 of the Texas Finance Code applies to a judgment awarded to a claimant, except that the applicable rate of interest may not exceed the maximum rate allowed by applicable Laws and Regulations.

11.13.6.3. Consistent with the Texas Civil Practice and Remedies Code, Section 114.011 (West 2011 & Supp. 2015), property owned by the State or any unit of state government is not subject to seizure, attachment, garnishment, or any other creditors' remedy to satisfy a judgment on a breach of contract claim.

11.13.7. Representation of TFC. The Office of the Texas Attorney General shall defend TFC in any proceeding or adjudication conducted in conjunction with a claim brought under this Section 11.13.

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

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

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

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

11.18. Limitation on Adjudication Awards. A/E expressly agrees as follows:

11.18.1. Recovery Limitations. In the event A/E brings a civil suit against TFC and prosecutes it to final judgment pursuant to Chapter 114 of the Code, any recovery by A/E shall be specifically limited to the balance due and owed by TFC on the Agreement as it may have been amended, including any amounts owed by written change orders.

11.18.2. Interest. Pre-judgment and post-judgment interest shall be limited to the rate allowed by applicable Laws and Regulations.

11.18.3. A/E Waiver of Claim. A/E HEREBY WAIVES ALL CLAIMS FOR MONETARY DAMAGES FOR ANY AMOUNT THAT MAY BE CLAIMED: (i) FOR THE INCREASED COST TO PERFORM WORK AS A DIRECT RESULT OF OWNER-CAUSED DELAYS OR ACCELERATION; (ii) BASED UPON AN UNJUST ENRICHMENT THEORY; (iii) FOR CONSEQUENTIAL AND EXEMPLARY DAMAGES; and (iv) FOR DAMAGES FOR ANY UNABSORBED HOME OFFICE OVERHEAD.

11.19. No Waiver of Sovereign Immunity. Except as may be expressly and specifically provided otherwise by Chapter 114, Texas Civil Practice and Remedies Code, nothing in this Agreement shall be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State

of Texas, TFC or the Using Agency. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under the Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

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

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

11.22. Further Assurances. A/E shall take such actions and execute such other and additional documents as are reasonably necessary or desirable in order to carry out the purposes and intent of this Agreement.

11.23. No Presumptions for Ambiguities. Each party hereby agrees, represents and warrants that: (i) the initial draft of this Agreement and any exhibits, and any additions, revisions, and amendments hereto, are the result of the parties' joint negotiations; (ii) each party has experience in the evaluation and assumption of risks and liabilities of the nature provided for herein, and has been represented and advised by legal counsel; and (iii) even though one Party may have drafted one or more of the documents comprising this Agreement, each party has been given the opportunity to review this Agreement and all its related documents with counsel of such party's choice. Therefore, each party hereby agrees, represents and warrants that any ambiguity in this Agreement or its related documents shall not, by virtue of the drafting thereof, be construed more strongly in favor of or against any one party over another party.

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

11.25. Schedule of Exhibits. The following shall be the exhibits to this Agreement, which are contained on the Exhibits CD, and are hereby incorporated herein by reference:

11.25.1. Exhibit A. 2015 Uniform General Conditions.

11.25.2. Exhibit B. 2018 Supplementary General Conditions.

11.25.3. Exhibit C. A/E Guidelines.

- 11.25.4. Exhibit D. List of A/E's Key Personnel.
 - 11.25.5. Exhibit E. A/E's Fee Schedule and Staffing Plan.
 - 11.25.6. Exhibit F. 2016 Texas Capitol Complex Master Plan (Available at this link: <http://www.tfc.state.tx.us/divisions/commissionadmin/tools/>).
 - 11.25.7. Exhibit G. Hourly Fee Rates for Additional Services.
 - 11.25.8. Exhibit H. Professional Services Schedule.
 - 11.25.9. Exhibit I. Detailed Scope of A/E's Services.
 - 11.25.10. Exhibit J. Owner's Project Requirements ("OPR").
 - 11.25.11. Exhibit K. Conceptual Plans.
 - 11.25.12. Exhibit L. BIM Protocols.
 - 11.25.13. Exhibit M. A/E's response to the Request for Qualifications, dated August 3, 2017.
 - 11.25.14. Exhibit N. HUB Subcontracting Plan Form.
 - 11.25.15. Exhibit O. HUB Subcontracting Plan PAR Form.
- 11.26. Survival of Terms. Termination of the Agreement for any reason shall not release A/E from any liability or obligation set forth in the Agreement that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution and invoice and verification.
- 11.27. Approval Not a Release. Approval by TFC shall not constitute nor be deemed a release of the responsibility and liability of A/E, A/E Personnel, its employees, Subcontractors, agents and consultants for the accuracy and competency of the Services and Work Product; nor shall such approval be deemed to be an assumption of such responsibility by TFC for any defect, error or omission in the Services, Work Product or other Documents prepared by A/E, A/E Personnel, its employees, subcontractors, agents and consultants. TFC's approval or acceptance of A/E's tasks and/or Services will not release A/E from any liability for such tasks and/or Services because TFC is, at all times, solely relying upon A/E's skill, knowledge and expertise in performing its tasks and Services.
- 11.28. Entire Agreement and Modification. This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that

may have been made in connection with the subject matter hereof, superseding all prior or contemporaneous agreements and negotiations between them. TFC shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind not expressly set forth herein and A/E agrees is it not acting in reliance on any such extraneous matters. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistently with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification, renewal, extension, or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

TEXAS FACILITIES COMMISSION

By: JSRH

John S. Raff

Interim Executive Director

Date of Execution: 3.15.18

G.C. NRG

Dir. NW

D.E.D. M

HKS, INC.

By: Jess Corrigan

Jess Corrigan, AIA

Partner, Senior Vice President

Date of Execution: 9 MARCH 2018

TFC Contract No. 18-142-000
HKS, Inc.
RFQ No. 303-7-01647
Project No. 17-016-8002

TFC CONTRACT NO. 18-142-000

HKS, INC.

EXHIBITS CD