

**PROFESSIONAL ARCHITECTURAL/ENGINEERING  
SERVICES AGREEMENT  
BETWEEN  
THE TEXAS FACILITIES COMMISSION  
AND  
IMEG CORP**

The Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701, as Owner (as defined in *2015 Uniform General Conditions* ("UGC"), Section 1.28) and IMEG CORP (hereinafter referred to as "A/E" as defined in UGC, Section. 1.4), located at 4630 North Loop 1604 West, Suite 201, San Antonio, Texas 78249, enter into the following contract for professional architectural and engineering services (hereinafter referred to as the "Agreement") pursuant to the Professional Services Procurement Act, Tex. Gov't Code Ann. Ch. 2254, Subch. A, to be effective as of the Effective Date (as defined below). Nothing in this Agreement shall be interpreted or construed to make A/E a third-party beneficiary hereunder.

**I. SCOPE OF SERVICES AND RESPONSIBILITIES FOR THE PROJECT.**

1.1. **PROJECT DESCRIPTION.** The project for which A/E agrees to provide professional architectural and engineering services is for electrical design services for the Federal Surplus buildings in (locations). Services include, but are not limited to: (i) replace existing warehouse lighting with new LED lights; (ii) upgrade lighting controls to comply with 2015 International Energy Conservation Code ("IECC 2015"); (iii) replace the main service disconnect switch and add a test rack of receptacles for user equipment testing purposes; (iv) assist TFC during bidding, submittal review; and (v) perform one (1) interim site observation and one (1) site observation at completion to generate punchlists for the Federal Surplus Property Warehouse buildings located at 103 Ackerman Road, San Antonio, Texas 78219, and 2826 North Beach Street, Fort Worth, Texas (hereinafter referred to as the "Project"), as further depicted in the A/E Proposals dated September 22, 2017, a digital copy of which is incorporated herein by reference for all purposes in portable document format ("PDF") on the compact disk attached hereto and labeled "TFC Contract No. 18-122-000 / IMEG CORP / Exhibits CD" (hereinafter referred to as the Exhibits CD"), and named therein as "Exhibit A." Changes to A/E's services for the Project set forth in this Agreement will not be allowed unless approved in writing by TFC. No compensation will be allowed for work by A/E performed without such prior approval.

1.2. **MOBILIZATION AND PREDESIGN.** A/E shall perform the following mobilization and pre-design services for the Project:

(a) Consult with TFC and the user agency to become thoroughly familiar with the "Project Analysis" as defined in Section 2166.001 of the Texas Government Code, or the equivalent thereof and the "Program" which includes overall goals of the Project, aesthetic considerations, and functional requirements including:

(i) allocations of space with uses and adjacency relationships for all spaces;  
and

- (ii) operational objectives.
- (b) Visit and become familiar with the site.
- (c) Review existing site and facilities studies as may be available and applicable.
- (d) Review the construction budget established for the Project by TFC and advise TFC if, in the opinion of A/E, said construction budget is sufficient to realize the design of the Project. If so, A/E shall confirm in writing its ability to prepare a design that will satisfy the Program requirements within the established construction budget. If the construction budget proposed by TFC cannot be reconciled with the Program requirements proposed by TFC to the satisfaction of A/E, TFC shall make appropriate adjustments to which A/E can subscribe and confirm. If this reconciliation of requirements cannot be accomplished, TFC, at its option, may waive the requirement for A/E budget conformance or terminate the services of A/E. In the event of the confirmation of the propriety of the established budget by A/E, TFC agrees that subsequent changes in Program or scope of the Project may be cause to modify the construction budget, and shall be done so by amendment to this Agreement.
- (e) Determine and advise TFC which codes, regulations and site-related requirements, such as environmental impact studies and interface with utility districts, may impact the design and construction of the Project.
- (f) Receive and become familiar with requirements of the technical and design standards of TFC and the user agency, such as the TFC Architectural/Engineering Guidelines and standards (hereinafter referred to as "A/E Guidelines") a digital copy of which is incorporated herein by reference for all purposes in PDF on the Exhibits CD named therein as "Exhibit B."
- (g) Determine and advise TFC which additional, if any, subcontractors not employed by A/E under this Agreement will be necessary to complement the services of A/E in order to fulfill requirements of the Program.
- (h) In collaboration with TFC, develop a schedule for the delivery of services under this Agreement. Such schedule shall be consistent with the deadlines and benchmarks of the overall Project schedule.
- (i) Confirm A/E ability to utilize the computer-aided design system and the project management control system utilized by TFC. Coordinate with TFC the manner of implementing these systems throughout the life of the Project.
- (j) If necessary, assign appropriate staff to receive instruction from TFC in the use of the electronic project management control system utilized by TFC.

1.3. **SCHEMATIC DESIGN.** A/E shall perform the following schematic design services for the Project.

(a) Based on the Program described in Section 1.2(a), prepare concept drawings and block diagrams sufficient to establish design direction and conduct interim reviews of draft solutions with TFC staff until an acceptable approach is established.

(b) Upon approval by TFC of concept diagrams and drawings, prepare and submit for review to TFC in electronic format and three (3) printed copies, each of the following:

(i) “Schematic Design Drawings” including a site development plan, building plans, elevations, sections and perspective sketches sufficient to convey comprehensive design intent;

(ii) a written outline summary of the areas within the proposed building, such summary corresponding to the general categories in the space allocation contained in the Program;

(iii) a written description of the building and general site development which shall include an overview of proposed exterior architectural materials and structural systems, together with the mechanical, electrical and plumbing (“MEP”) systems and services being contemplated; and

(iv) an order-of-magnitude cost estimate.

(c) Upon receipt of TFC’s review comments on the submittals described in Section 1.3(b), update such documents taking into account said review comments to the satisfaction of TFC and submit for approval until the satisfactory resolution of all issues is achieved. At no such time will approval by TFC of updated documents be unreasonably withheld.

(d) Upon receipt of TFC’s approval of the schematic design documents, prepare final presentation documents comprised of the components described in Section 1.3(b)(i) plus two (2) perspective renderings in color, such renderings to include an aerial view (or other view as may be determined by TFC) and ground level view of the main façade. Provide three (3) copies of the presentation documents plus the originals and an electronic copy of each of the color perspective renderings. Additional color renderings, models, or presentations in other media, which may be required by TFC, will be considered a “Reimbursable Expense” as defined in Section 3.1 of this Agreement.

(e) Using the final presentation documents in original or electronic format as directed by TFC, conduct a total of not more than three (3) explanatory presentations at times during the course of the Project as may be required by TFC.

**1.4. DESIGN DEVELOPMENT PHASE.** A/E shall perform the following design and bid document preparation services for the Project.

(a) Based on the approved schematic design documents, prepare “Design Development Documents” consisting of plans, elevations and such other drawings, calculations and outline specifications as are necessary to fix and illustrate the size and character of the entire Project in its essentials as to kinds of materials and assembly details, type of structure, and to coordinate the interface of all architectural and structural elements with all building systems.

(b) Such Design Development Documents shall be based on appropriate calculations which appropriately determine all architectural and engineering components, and A/E shall submit to TFC the following:

(i) written criteria for structural system proposed, including the rationale for determinations, design loads for floor, roof, and lateral loads;

(ii) written criteria for HVAC system proposed and single line layout of piping systems;

(iii) electrical design criteria including design and reserve capacity;

(iv) a written evaluation of energy conservation alternatives. A/E shall file the Energy Conservation Design Standard Compliance Statement with the State Energy Conservation Office and the Texas Comptroller of Public Accounts; and

(v) copies of manufacturers' illustrations of materials and equipment proposed to be specified for the Project.

(c) In completing the above, A/E shall coordinate and/or incorporate the work product of any third party contractors which may have been identified in compliance with Section 1.2(g) of this Agreement and appointed by TFC.

(d) Using Construction Specifications Institute ("C.S.I.") format, prepare a detailed estimate of the probable Project construction cost. If such estimated cost exceeds by more than 15% the order-of-magnitude construction cost required in Section 1.3(b)(iv) of this Agreement, A/E shall consult with TFC to identify design modifications which will enable compliance with the budget. Modifications so identified and approved by TFC shall be made to the Design Development Documents by A/E at no cost to TFC.

(e) Assure that all design criteria and product as illustrated by the Design Development Documents are in compliance with all local, State and Federal applicable codes and regulations.

(f) Submit in electronic format and three (3) printed copies to TFC for review, all Design Development Documents. Update documents in compliance with TFC's review, and obtain TFC's written approval before proceeding to the next phase.

**1.5. CONTRACT DOCUMENTS PHASE.** A/E shall perform the following Contract Documents phase services for the Project.

(a) Based on the approved Design Development Documents, prepare "Contract Documents" consisting of the bid documents, a project manual, and such other drawings and specifications as may be necessary to set forth, in detail, the work required for the Project. Such documents must be complete and sufficiently reflect the design intent established in previous phases of services delivered under this Agreement.

(i) If requested by TFC in writing, A/E shall as an “Additional Service” as defined in Section 3.2 of this Agreement, prepare the Contract Documents so as to allow the awarding of separate contracts for the various phases of the work.

(ii) A/E shall date and appropriately seal and sign the Contract Documents to reflect the appropriate professional design disciplines. No Contract Documents shall be issued or released for any purpose without first having been approved by TFC.

(iii) Include in the Contract Documents applicable requirements of the statutory provisions for disabled persons as required by Title III of the Americans with Disabilities Act (“ADA”) and the Texas Architectural Barriers Act and Texas Accessibility Standards found in Texas Government Code, Chapter 469. A/E will submit all required documents to the Texas Department of Licensing and Regulations (“TDLR”) as TFC’s authorized agent and obtain the TDLR’s opinion that the Project is designed in compliance with accessibility standards. A/E shall submit to TFC a copy of the TDLR compliance opinion upon receipt.

(b) Using C.S.I. format, prepare a detailed estimate of the probable project construction cost. If such estimated cost exceeds by more than 10% the project construction cost, A/E shall consult with TFC to identify design modifications which will enable compliance with the budget. Modifications so identified and approved by TFC shall be made to the documents by the A/E at no cost to TFC.

(c) File all documents required to secure approval and fulfill requirements of governmental authorities identified under Section 1.2(e) of this Agreement. Costs associated with submitting documents to such authorities and permit fees will be reimbursed to A/E by TFC pursuant to Section 3.1 of this Agreement.

(d) Submit in electronic format and three (3) printed copies to TFC for review, all Contract Documents described in this section. Update documents in compliance with TFC’s review, and obtain TFC’s written approval before release of documents for bidding or construction. Provide TFC a full set of electronic data disk(s) in the format agreed in accordance with Section 1.2(i) of this Agreement.

(e) Modifications to the Contract Documents which are made necessary by the errors and omissions of the A/E shall be corrected by the A/E at its expense.

(i) An omission is defined as any change or addition in the Contract Documents required to make the Project whole to its original design intent.

(ii) An error is defined as any change or addition to the Contract Documents where remediation of a previously implemented work must occur to meet code and/or design intent or any omission that is caused by gross negligence by A/E. In the event that A/E is determined to have been the cause of such an error, A/E shall bear the reasonable costs, in excess of value added to the Project, to resolve said error.

**1.6. CONTRACT BIDDING AND AWARD PHASE.** A/E shall perform the following contract bidding and award phase services for the Project.

(a) At the sole expense of A/E, furnish TFC with up to thirty (30) sets of reproductions of the approved Contract Documents for distribution to qualified bidders. TFC shall request and pay direct expenses for the reproduction of additional copies, if required.

(b) Assist TFC in the bidding process by performing the following:

(i) inform qualified bidders of the solicitation;

(ii) distribute Contract Documents to qualified bidders and to plan rooms designated by TFC;

(iii) if designated by TFC, take the necessary action in providing documents to selected on-line electric plan rooms the cost of which is a reimbursable expense;

(iv) attend pre-bid meeting(s) conducted by TFC; and

(v) respond to questions about the Contract Documents as well as prepare any addenda or amendments required to the solicitation documents which arise during the bid process: all questions and responses shall go through TFC.

(c) A/E shall participate in the evaluation and scoring of all proposals received during the solicitation process in accordance with TFC processes and procedures.

(d) If the lowest acceptable bid price exceeds the established budget allocated for construction or any subsequent modifications and TFC does not allocate additional funds, A/E agrees to redesign the Project and revise the drawings and reissue the bid documents as may be necessary, without additional cost to TFC, to bring the total Project cost within the funds allocated for construction. Should TFC elect to allocate additional funds to compensate for such overrun construction cost and the Project proceeds, A/E agrees there will be no increase in its fee.

**1.7. CONSTRUCTION PHASE – GENERAL ADMINISTRATION OF CONSTRUCTION CONTRACTS.** A/E shall perform the following services for the general administration of the construction contract(s) during the construction phase of the Project.

(a) Perform professional observation to determine that all elements of the Project are being constructed in compliance with the Contract Documents.

(b) Provide periodic observations during all phases of work. Such observations shall include, but shall not be limited to, all functions described in Texas Government Code Sections 2166.351(3) and 2166.355 applicable to professional inspection. A/E acknowledges that professional observation requires presence at the site not less than weekly during construction.

(c) If requested by TFC as an Additional Service, as defined in Section 3.2 of this Agreement, provide an on-site representative, approved by TFC, during the construction phase of the Project. This representative shall have decision-making authority to bind the A/E applicable to the work and the Project.

(d) Be the final authority concerning design intent and interpretation of the Contract Documents in the administration of the construction contract.

(e) Properly and periodically inspect the work in progress on the Project and follow established procedures in the handling of submittals, applications for payment, change orders, and other administrative tasks. In addition, respond to requests for information, clarification or assistance from the "Contractor," as defined in the UGC, Section 1.16. Any inspections of the Project conducted by TFC during the course of construction shall not diminish A/E's responsibilities under this section.

(f) Conduct contract administration activities making use of the TFC electronic project management control system as applicable, and in conformance with the time lines established in the 2015 Uniform General Conditions (hereinafter referred to as the "UGC"), a digital copy of which is incorporated herein by reference for all purposes in PDF on the Exhibits CD and labeled therein as "Exhibit C."

(g) Obtain the approval of TFC for any contemplated construction change prior to preparing any change documents and prepare drawings and/or specifications for approved proposed changes and submit them to the Contractor for a price proposal. Thereafter, A/E shall review the contractor's proposal and recommend approval or disapproval to TFC.

(h) Throughout the course of construction update all Contract Documents to reflect as-built conditions, regardless of the cause or source of changes to the approved documents.

(i) During construction, submit weekly reports to TFC describing overall job progress, contract and projected completion dates, percentage of completion, deficiencies, status of revisions, existing or potential problem areas and status of Contract Documents. Such reports shall be compiled and submitted in the format designated by TFC.

(j) Upon receipt of notification by the Contractor that work has been completed, A/E shall conduct an inspection, performed by the appropriate members of its staff and its professional and/or engineering affiliates. As a result of this inspection, A/E shall prepare a list of the items needing correction. After confirming that the Contractor has performed the required corrections, A/E shall notify TFC in writing that the contract has been performed according to the plans and specifications and is ready to conduct the "Final Inspection," as defined in Article 12 of the UGC. A/E shall accompany TFC on the Final Inspection to ensure that the total work has been completed in accordance with the Contract Documents. A/E shall review all warranties, guarantees, bonds, equipment operating instructions and similar required material and documents to ensure that all such materials and documents are received and that they meet the requirements of the Contract Documents. Within forty eight (48) hours of such confirmation, A/E shall transmit said materials and documents to TFC. After determining that the work was constructed in conformance with the Contract Documents, A/E shall authorize issuance of a "Notice of Substantial Completion" and approve the Contractor's application for final payment in accordance with the UGC and other Contract Documents.

(k) Upon completion of construction and prior to any request for final payment, A/E shall furnish to TFC record documents that reflect changes in the original construction drawings and final location of mechanical service lines and outlets and shall provide to TFC electronic data disks of all Contract Documents. Each disk shall be labeled including information of the Software and version used. CAD drawings shall be organized within a standardized layering system. Layer format and names shall be in accordance with the A/E Guidelines. It is expressly understood that the original disks remain the property of the A/E. If, subsequently, differences should appear between TFC copies and A/E's copies, A/E's disks shall be deemed originals.

**1.8. WARRANTY PHASE.** If requested by TFC as an Additional Service, as defined in Section 3.2 of this Agreement, A/E shall perform the following warranty phase services for the Project.

(a) At least thirty (30) days before the completion of the warranty period for the Project, provide at least one on-site inspection performed by the appropriate members of A/E's staff and its professional and/or engineering affiliates. A/E shall inspect all Project conditions to ensure that all equipment, materials and workmanship continue to meet the requirements and performance expectations of the Contract Documents. As a result of this inspection, A/E shall prepare a list of the items needing correction.

(b) Assist TFC in the resolution of warranty items and/or latent defects. A/E shall submit monthly reports to TFC until all warranty and/or latent defects are resolved to the satisfaction of TFC.

(c) A/E agrees that any fixed fees for services performed under Section 1.8 of this Agreement shall be based on the hourly rates set forth in "Exhibit D," a digital copy of which is incorporated herein by reference for all purposes in PDF on the Exhibits CD.

**1.9. TFC'S RESPONSIBILITIES.** TFC shall perform the following services for the Project.

- (a) TFC shall provide A/E the following information for the Project:
- (i) full information as to the requirements for the Project and procedures to be followed;
  - (ii) a copy of the UGC and sample copies of contract forms, bond forms, bidding information and instructions, minimum wage rates and HUB Subcontracting Plan documents;
  - (iii) maps showing site boundaries, easements, topography, utility locations, and such other site conditions or restrictions which may impact the design and/or construction of the Project;
  - (iv) soil reports as required by the A/E; and

(v) a full description of procedures to be followed in the interaction between TFC, its contractors, and A/E; such description to include training in the use of any electronic project management control systems employed by TFC on the Project.

(b) TFC shall provide A/E the following services for the Project:

(i) assist A/E in gaining entry to property as necessary for performance of A/E's services under this Agreement;

(ii) designate a project manager for the implementation of work under this Agreement who will serve as the point of contact between TFC, the user agency (if any), and A/E. TFC's Project Manager shall supervise TFC's review and approval of A/E's work product, deliverables, draft and final reports, payment requests, schedules, budget administration and similar matters. The Project Manager does not have any express or implied authority to vary the terms of the, amend the Agreement in any way, or waive strict performance of the terms of conditions or the Agreement;

(iii) provide, or cause to be provided, such additional professional services as may be necessary to complete the Project that are not provided under this Agreement;

(iv) provide intermediate reviews of the work product of the A/E as necessary to allow A/E to proceed with delivery of its services in a timely way; and

(v) if deemed necessary by TFC and utilizing its inspection staff, TFC may conduct different levels of inspection during construction of the Project. However, this activity shall not relieve A/E from its obligations under this Agreement.

1.10. **A/E PERSONNEL.** (a) A/E's designated project manager, employees and associated subcontractors to be utilized in the performance of these services under this Agreement are identified in the List of A/E Key Personnel, a digital copy of which is incorporated herein by reference for all purposes in PDF on the Exhibits CD and labeled therein as "Exhibit E." The persons identified in Exhibit E shall not be changed except with TFC's prior written acknowledgement and concurrence, which shall not be unreasonably withheld. TFC has the right to approve A/E's project manager and replace if necessary during the course of the Project if not performing adequately.

(b) A/E will commit the assigned and approved project manager for the amount of time necessary to fully manage and oversee the responsibilities of A/E. TFC maintains the right to require the use of up to a full time status, if deemed necessary, for the proper execution of A/E's deliverables.

(c) All project design team members shall cooperate and assist all other contractors and design professionals retained by TFC during the Project. A/E's agreements with its contractors and subcontractors shall contain a provision to preclude any contractor, subcontractor and/or principals and families, from having any financial interest in a firm, which bids or performs any part of the construction work. These agreements must be made available to TFC upon request.

1.11. **MEETING ATTENDANCE.** Unless otherwise addressed in this Agreement, attendance at all meetings necessary to the delivery of all services to be provided by A/E is an integral part of such services and included in the fees as set forth in Article III of this Agreement.

## II. TERM.

2.1. **DURATION.** This Agreement shall be effective as of the date executed by the last party, and shall terminate on December 1, 2018, unless extended by the parties by amendment to this Agreement or terminated earlier, as provided below.

2.2. **TERMINATION.** (a) TFC may terminate this Agreement immediately for default by providing written notice to A/E of such termination if the A/E fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Agreement. In the event of abandonment or default, A/E will be responsible for paying damages to TFC, including but not limited to, the cost to re-solicit this Agreement and any consequential damages to the State of Texas or TFC resulting from A/E's non-performance. The defaulting A/E will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the scope of work is significantly changed.

(b) TFC may, at its sole option and discretion, terminate this Agreement at any time, for any reason whatsoever, in whole or in part, by giving written notice (the "Notice of Termination") to A/E at least ten (10) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by TFC under this subsection, A/E shall be governed by the terms and conditions, and shall perform the acts outlined in the following Subsection (c) below.

(c) A/E shall terminate all work under the Agreement to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary as determined by TFC to preserve the work in progress and to protect materials, properties, and equipment. In the event of termination by TFC, TFC shall pay A/E for all work satisfactorily performed up to the effective date of termination or reduction in the scope of work in accordance with the prices included in the scope of work.

(d) A/E may terminate the Agreement upon providing thirty (30) days' written notice to TFC. In the event of termination by A/E, A/E shall be governed by the terms and conditions of this Agreement, and shall perform the acts outlined in Subsection (c) above. A/E will be held responsible for additional cost incurred from the termination of this Agreement.

2.3. **NO LIABILITY UPON TERMINATION.** If this Agreement is terminated for any reason, TFC and the State of Texas shall not be liable to A/E for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to the Texas Civil Practice and Remedies Code, Chapter 114 or the Texas Government Code, Chapter 2260.

### III. CONSIDERATION.

3.1. **CONTRACT LIMIT AND FEES AND EXPENSES.** (a) The total amount of this Agreement shall not exceed the sum of Twenty Three Thousand and No/100 Dollars (\$23,000.00), inclusive of reimbursable expenses. A/E shall submit detailed invoices monthly to TFC for services performed and shall be based on hourly rates set forth in Exhibit D. TFC agrees to pay A/E in accordance with Chapter 2251 of the Texas Government Code, also known as the "Prompt Payment Act."

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

(c) Changes in the scope of services affecting the cost of services provided for in this Agreement shall be approved by TFC by amendment to this Agreement. No compensation will be allowed for work performed without such amendment.

(d) A/E shall closely monitor the amount of its work and notify TFC, in writing, within five (5) working days of when expenditures for such work reaches eighty (80) percent of approved maximum not-to-exceed contract amount(s). Nothing herein shall be construed to require TFC to increase the approved maximum not-to-exceed contract amount(s) established under this Agreement.

3.2. **ADDITIONAL SERVICES.** "Additional Services" are those services not included in Article I of this Agreement which may be requested by TFC at any time for the duration of this Agreement. Upon request by TFC for Additional Services, A/E shall prepare and submit to TFC a proposal for such services requested. Additional Services shall be performed at a rate negotiated between TFC and A/E and shall be approved by the parties by amendment to this Agreement.

3.3. **PAYMENTS TO A/E.** Payments to A/E shall be made monthly in proportion to the services performed.

3.4. **PAYMENTS TO SUBCONTRACTORS.** For all services rendered, A/E's payment to subcontractors is due within ten (10) days after receipt of payment from the TFC and, when appropriate, TFC shall issue joint checks to the A/E and sub-contractors.

**IV. A/E'S REPRESENTATIONS, RESPONSIBILITY AND LIABILITY.**

4.1. **PERFORMANCE REPRESENTATIONS.** (a) A/E represents that all services provided by A/E under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. A/E represents that any plans, drawings, photos, designs, studies, specifications, computer programs, technical reports, and other work which is specified to be delivered under this Agreement and which are to be paid for by TFC (collectively, the "Deliverables") under this Agreement shall be: (i) completed 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.

(b) If A/E fails to provide or satisfactorily perform any of the conditions, work, or Deliverables called for by this Agreement within the time requirements specified, then TFC may require A/E to:

(i) repair or replace, at A/E's expense, any or all defective or damaged Deliverables;

(ii) refund any payment received for any defective or damaged Deliverables and, in conjunction therewith, require A/E to accept the return of any defective or damaged Deliverables at A/E's sole expense; and/or

(iii) take necessary action to provide that future performance conforms to the Agreement requirements at A/E's sole expense.

4.2. **RESPONSIBILITY AND LIABILITY.** (a) Acceptance and approval of a final Project Report or other documents or computer programs by TFC shall not constitute nor be deemed a release of A/E's responsibilities and liability for the accuracy and competency of A/E's work products, computer programs, or other documents and services prepared or performed under this Agreement. No approvals or acceptances by or on behalf of TFC shall be deemed to be an assumption of such responsibility by TFC for any defect, error or omission in said work products, computer programs or other documents and services as prepared or performed by A/E.

(b) A/E does not guarantee the performance of a construction contractor. A/E shall timely inform TFC of any observation of a construction contractor's failure to perform their work in accordance with the construction contract and current approved schedule and shall recommend to TFC measures to correct such failures.

**V. A/E GENERAL AFFIRMATIONS.**

5.1. **FINANCIAL INTERESTS/GIFTS.** (a) Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, 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 Agreement.

(b) Pursuant to Texas Government Code Chapter 573 and Section 2254.032, 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.

5.2. **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 and Section 2254.032. 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 Agreement during the twelve (12) month period immediately following the employee's last date of employment at TFC.

5.3. **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).

5.4. **FAMILY CODE.** Pursuant to the requirements of Texas Family Code, Section 231.006, regarding delinquent child support, the undersigned signatory certifies that 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 the name and Social Security number of each person (sole proprietors, firm owners, partners, or shareholders) with at least 25% ownership of the business entity entering into this Agreement prior to its execution. A/E acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

5.5. **DEBTS OR DELINQUENCIES TO STATE.** A/E understands and agrees that any payment due under this Agreement may be 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.

5.6. **A/E SAFETY.** All A/E's and subcontractors conducting work for TFC shall abide by all OSHA rules and regulations provided by the Department of Labor, OSHA, Code of Federal Regulations, Chapter 29. Employees of A/E and subcontractors shall be trained in accordance with Chapter 29, Occupational Safety and Health Regulations. A/E and subcontractors shall

inform the Contract Administrator of their Hazardous Electrical Energy Control, Lockout/Tag-out Procedure. A/E's procedure must meet or exceed TFC's procedure as determined by the Contract Administrator. Work shall not be done on energized electrical circuits, components or equipment. When de-energizing is impractical due to possible harm to personnel, equipment or facility damage, negative onsite or offsite environmental impact, or business interruption Contractor must follow OSHA requirements as detailed in OSHA Regulations 1910.331 – 1910.399.

**5.7. CONTRACTOR COOPERATION.** (a) A/E agrees to conduct all of its services under this Agreement by and through appropriate communications with the Contract Administrator. No work, installation or other services shall be undertaken by A/E except with the prior written direction of the Contract Administrator. A/E understands and agrees that work, installation or any other service performed without the prior written direction of the Contract Administrator is work outside the scope of this Agreement and shall be performed exclusively at A/E's risk.

(b) A/E agrees to employ competent personnel meeting the requirements outlined in the specifications, who shall be satisfactory to TFC. Personnel assigned to perform services under this Agreement may not be reassigned without the prior written approval by the Contract Administrator. TFC may request that A/E replace unsatisfactory personnel, which request shall not be unreasonably denied. A/E agrees to cooperate and coordinate its work with that of other Contractors retained by owner. Upon discovery of an apparent conflict in the sequencing of work with another Contractor, A/E shall report the concern to the Contract Administrator who will resolve the conflict.

**5.8. E-VERIFY.** (a) By entering into this Agreement, A/E certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of: all persons employed to perform duties within the State of Texas, during the term of the Agreement; and all persons (including subcontractors) assigned by the A/E to perform work pursuant to the Agreement, within the United States of America.

(b) A/E shall provide, upon request of TFC and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the A/E, and A/E's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Agreement may be immediately terminated, at the discretion of TFC, and at no fault to TFC, with no prior notification. A/E shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Agreement.

(c) For persons not eligible for E-Verify screening, A/E (including sub-contractors) shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

**5.9. IDENTIFICATION OF PROJECT MANAGER AND ALL SUBCONTRACTORS.** The Project Manager identified in the initial List of A/E Project Manager and Subcontractors (hereinafter referred to as the "List"), a digital copy of which is incorporated herein by reference for all

purposes in PDF on the Exhibits CD and labeled therein as "Exhibit F," will supervise the efforts of Contractor to timely provide TFC with the Construction Services.

(a) The Project Manager must be committed to the Project on a full-time basis. TFC reserves the right to approve the appointment of the Project Manager and to demand that the Project Manager, and any of Contractor's employees or Subcontractors, be removed and replaced if, in the sole opinion of TFC, their performance on this Project or any other Projects, is and/or was not adequate or their continued involvement with the Project will, is, or has become, detrimental to the timely and successful completion of the Project, including but not limited to, for such reasons as:

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

(b) The Project Manager and Subcontractors identified in the List shall not be removed or replaced by Contractor, nor shall any other Subcontractors be engaged by Contractor, unless prior written consent is obtained from TFC, which consent shall not be unreasonably withheld, conditioned, or delayed.

5.10. **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.

5.11. **EQUAL OPPORTUNITY.** A/E shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. 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, sex, religion, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. 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.

5.12. **DECEPTIVE TRADE PRACTICE; UNFAIR BUSINESS PRACTICES.** A/E represents and warrants that it has not been found liable of Deceptive Trade Practices violations under Texas Business and Commerce Code, Chapter 17, 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 Texas Business and Commerce Code, Chapter 17, or of any unfair business practices against either A/E or any of A/E's officers are currently pending in an administrative proceeding or in a lawsuit filed with any court, then A/E shall disclose all such pending matters to TFC and provide 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.

**5.13. GENERAL AND CRIMINAL BACKGROUND CHECKS.** (a) 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).

(b) All of A/E's employees and Subcontractors that will perform any Professional Services on-site at a state-owned property shall be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by A/E. All criminal background check forms for all A/E employees and subcontractors that will initially commence any work on-site must be fully completed and submitted to TFC within fifteen (15) days of the date of the notice of award, and the process thereafter must be diligently pursued by A/E. The process must be satisfactorily completed for every employee and subcontractor before they perform services at the site.

(c) All criminal background checks must be accomplished by the Texas Department of Public Safety (hereinafter referred to as "DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of A/E's employees and/or Subcontractors, DPS or TFC, will adjudicate the results of the criminal background searches in accordance with the criteria set forth in the *Criminal Background Checks and Application Guidelines*, a digital copy of which is incorporated herein by reference for all purposes in PDF on the Exhibits CD, and named therein as "Exhibit G." A/E's or Subcontractor's failure to timely secure criminal background check clearance shall not be considered a legitimate delay in the Professional Services Schedule.

**5.14. AGENCY EXECUTIVE HEAD.** Under Texas Government Code, Section 669.003 relating to contracting with an executive of a state agency, A/E represents that 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 shall provide the following information: the Name of the former executive, the name of the State agency, the date of separation from State agency, the position held with A/E, and the date of employment with A/E.

**5.15. NO CONFLICTS.** A/E represents and warrants that A/E has no actual or potential conflicts of interest in providing services to the State of Texas under this A/E and that A/E's provision of services under this Agreement would not reasonably create an appearance of impropriety.

**5.16. PROHIBITION ON CERTAIN BIDS AND CONTRACTS.** Under Texas Government Code, Section 2155.006, relating to the prohibition of certain bids and contracts, 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. A/E represents and warrants that during the five (5) year period preceding the date of this Agreement, A/E has not been: (i) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (ii) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

5.17. **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. STATE FUNDING.

6.1. **STATE FUNDING.** (a) 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.

(b) 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; provided, however, the foregoing shall not be construed as a waiver of sovereign immunity.

## VII. COPYRIGHTS AND RIGHTS IN DATA.

7.1. **COPYRIGHTS AND RIGHTS IN DATA.** (a) A/E agrees that all Deliverables, as previously defined in Section 4.1, provided under 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. If the Deliverables produced by A/E are copyrightable, A/E may copyright it, subject to the rights of TFC. TFC reserves 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 extended to produce copyrightable subject data.

(b) All such Deliverables furnished by A/E pursuant to this Agreement shall be considered instruments of their 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.

(c) 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.

### **VIII. RECORDS, AUDIT, PROPRIETARY INFORMATION, AND PUBLIC DISCLOSURE.**

8.1. **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 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.

8.2. **INSPECTION AND AUDIT.** 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, the contracting agency or its contracted examiners, or the Texas Attorney General's Office, 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, the SAO may conduct an audit or investigation of any entity receiving funds under this Agreement, including direct payments to the 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.

8.3. **PERIOD OF RETENTION.** All records relevant to this Agreement shall be retained a minimum seven (7) years. The retention period runs from the date of payment for the relevant goods or services by TFC, or from the date of termination of the Agreement, 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.

8.4. **CONFIDENTIALITY.** (a) A/E shall keep confidential all information, in whatever form, produced, prepared, observed or received by A/E to the extent that such information is:

- (i) confidential by law;
- (ii) marked or designated "confidential" (or words to that effect) by TFC; or

(iii) information that A/E is otherwise required to keep confidential by this Agreement.

(b) Furthermore, A/E will not advertise that it is doing business with TFC or use this Agreement as a marketing or sales tool without the prior written consent of TFC.

8.5. **PUBLIC DISCLOSURE.** No public disclosures or news releases pertaining to this Agreement shall be made without prior written approval of TFC.

8.6. **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. 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 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.

8.7. **ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS.** (a) 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.

(b) If applicable, A/E shall provide the Texas Department of Information Resources ("DIR") with the universal resource link, also known as 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>). A/E's 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/>.

## IX. INSURANCE AND LEGAL OBLIGATIONS.

9.1. **INSURANCE.** Prior to the commencement of work under this Agreement, A/E agrees to carry and maintain insurance in the following types and amounts for the duration of this Agreement, and furnish certificates of insurance utilizing the ACORD 25 (2016/03) form a digital specimen of which is incorporated herein by reference for all purposes in PDF on the Exhibits CD, and named therein as “Exhibit H,” and make available copies of policy declaration pages and policy endorsements as evidence thereof:

(a) Workers’ compensation and employers’ liability coverage with minimum policy limits for employers’ liability of \$1,000,000.00 bodily injury per accident, \$1,000,000.00 bodily injury disease policy limit and \$1,000,000.00 per disease, per employee. Workers’ compensation insurance coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(44). Certification in writing from the contractor and subcontractors shall be provided to TFC in accordance with Texas Labor Code, Section 406.096. The policy shall be endorsed to include Waiver of Subrogation in favor of TFC.

(b) Commercial general liability with a combined single limit of \$1,000,000.00 per occurrence including products/completed operations, where appropriate, with a separate general aggregate of \$2,000,000.00. The policy shall contain the following provisions:

- (i) The general aggregate limit shall apply on a per Project basis;
- (ii) Independent Contractors coverage;
- (iii) State of Texas, TFC, its officials, directors, employees, representatives, and volunteers must be listed as an additional insureds;
- (iv) Thirty (30) day Notice of Cancellation in favor of TFC; and
- (v) Waiver of Subrogation in favor of TFC.

(c) Business automobile liability insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000.00 per accident for bodily injury and property damage. Alternate acceptable limits are \$1,000,000.00 bodily injury per person, \$1,000,000.00 bodily injury per accident and at least \$1,000,000.00 property damage liability per accident. The policy shall contain the following endorsements in favor of TFC:

- (i) Waiver of Subrogation endorsement;
- (ii) Thirty (30) day Notice of Cancellation endorsement; and
- (iii) Additional Insured endorsement.

(d) Architect/Engineers professional liability insurance with a minimum limit of \$1,000,000.00 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or

omission committed with respect to plans, maps, drawings, analysis, reports, surveys, change orders, designs, or specifications prepared by the insured. A/E shall maintain coverage for the duration of this Agreement and for not less than twenty-four (24) months following completion of the Project, whichever is longer.

9.2. **GENERAL REQUIREMENTS FOR INSURANCE.** (a) A/E shall be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention shall be disclosed on the certificate of insurance required above. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date.

(b) A/E shall maintain coverage for the duration of this Agreement, and shall maintain coverage for the professional liability insurance for not less than twenty-four (24) months following completion of the Project. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. A/E shall, on at least an annual basis, provide TFC with an insurance certificate as evidence of such insurance. The premium for this extended reporting period shall be paid by A/E.

(c) A/E shall not commence work under this Agreement until they have obtained the required insurance and until such insurance has been reviewed by TFC. A/E shall not allow any sub-consultants to commence work until the required insurance has been obtained and approved. Approval of insurance by TFC shall not relieve or decrease the liability of A/E hereunder.

(d) Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A.M. Best rating of A- or better.

(e) A/E shall produce endorsements upon TFC's request to each affected policy:

(i) That obligates the insurance company to notify the Project Manager, at TFC, P.O. Box 13047, Austin, Texas 78711, of any non-renewal, cancellations or material changes at least thirty (30) days prior to change or cancellation.

(ii) That the "other" insurance clause shall not apply to the State where TFC is an additional insured shown on the policy. It is intended that policies required in this Agreement, covering both TFC and A/E, shall be considered primary coverage as applicable.

(f) TFC shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.

(g) A/E shall not cause any insurance required under this Agreement to cancel nor permit any insurance to lapse during the term of this Agreement.

(h) TFC reserves the right to review the insurance requirements of this section during the effective period of the Agreement and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions or the claims history of the industry as well as A/E (such adjustments shall be commercially available to A/E).

(i) A/E shall provide TFC thirty (30) days written notice of erosion of the aggregate limit.

(j) Actual losses not covered by insurance as required by this Agreement shall be paid by A/E.

9.3. **LEGAL OBLIGATIONS.** 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.

#### **X. MISCELLANEOUS PROVISIONS.**

10.1. **INDEMNIFICATION.** (a) **ACTS OR OMISSIONS.** A/E SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMERS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF A/E OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY 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.

(b) **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 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 THE 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.

(c) 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 THE 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.**

10.2. **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 this provision, it is mutually understood and agreed that A/E may subcontract with others for some or all of the services to be performed. 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 subcontractor comply with all the terms and provisions of this Agreement. A/E will 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.

10.3. **HISTORICALLY UNDERUTILIZED BUSINESSES (“HUBS”).** In accordance with State law, it is TFC’s policy to assist HUBs, whether minority or women-owned, 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. At or prior to the execution of an amendment increasing this Agreement to a value that meets or exceed One Hundred Thousand and No/100 Dollars (\$100,000.00), A/E shall comply with all HUB requirements pursuant to Texas Government Code, Chapter 2161 and file with TFC a HUB Subcontracting Plan, a digital copy of the form for which is incorporated herein by reference for all purposes on the Exhibits CD and labeled thereon as “Exhibit I-1.” A/E shall provide TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the HUB Subcontracting Plan Progress Assessment Report (“PAR”), a digital copy of the form for which is incorporated herein by reference for all purposes on the Exhibits CD and labeled thereon as “Exhibit I-2.” PARs shall be submitted monthly with each invoice and are a condition of payment.

10.4. **IMMIGRATION REFORM.** (a) 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.

(b) 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.

(c) 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.

(d) 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.

**10.5. DRUG FREE WORK PLACE.** A/E, A/E’s employees and subcontractors shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 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 subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**10.6. 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.

**10.7. 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. 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.

10.8. **COMPLIANCE WITH OTHER LAWS.** In the execution of this Agreement, A/E shall comply with all applicable federal, state, and local laws, including laws governing labor, equal employment opportunity, safety, and environmental protection. A/E shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Agreement.

10.9. **NOTICES.** Any notice required or permitted to be delivered under this Agreement shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the TFC or A/E, as the case may be, at the address set forth below:

For TFC: Texas Facilities Commission  
Attention: Legal Services Division  
1711 San Jacinto Blvd., Room 400  
Austin, Texas 78701

For A/E: IMEG CORP  
Attention: Ali Hami, P.E. Principal  
4630 North Loop 1604 West, Suite 201  
San Antonio, Texas 78249  
Phone: (210) 530-7000  
E-Mail: Ali.Hami@IMEGCORP.com

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

10.10. **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 Agreement. If the change entails personnel changes for personnel performing the responsibilities of the Agreement 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 Agreement 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 Agreement. TFC may terminate the Agreement due to any change to A/E that materially alters A/E's ability to perform under the Agreement.

**10.11. 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 under this Agreement shall be in a court of competent jurisdiction in Travis County, Texas. A/E 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 any action or proceeding in such jurisdiction in respect of this Agreement or any document related hereto. **Nothing in this section shall be construed as a waiver of sovereign immunity by TFC.**

**10.12. SEVERABILITY.** If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

**10.13. 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 Agreement is effective for the period of time specified in the Agreement. Any services performed by A/E before this Agreement is effective or after it ceases to be effective are performed at the sole risk of A/E.

**10.14. FORCE MAJEURE.** (a) Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Agreement, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused 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, herein called "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. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, TFC may terminate this Agreement immediately upon written notification to A/E.

(b) 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 the A/E's services under this Agreement shall be approved by TFC by amendment to this Agreement.

**10.15. DISPUTE RESOLUTION.** Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by the parties to attempt to resolve all disputes arising under this Agreement. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed

by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code, Section 114.002 shall be governed by the following dispute resolution process:

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

(i) 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. The notice must state with particularity:

- (A) the nature of the alleged breach;
- (B) the amount A/E seeks as damages; and
- (C) the legal theory of recovery.

(ii) 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 Subsection (i) above.

(b) The total amount of money recoverable on a claim for breach of contract under this Section 10.15 may not, after deducting the amount specified in Subsection (c) below, exceed an amount equal to the sum of:

- (i) the balance due and owing on the contract price;
- (ii) 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
- (iii) any delay or labor-related expense incurred by the 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.

(c) 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 Subsection (b) above.

(d) Any award of damages under this Agreement may not include:

- (i) consequential or similar damages, except delays or labor-related expenses described by Subsection (b)(i)(C) above;
- (ii) exemplary damages;
- (iii) any damages based on an unjust enrichment theory;
- (iv) attorney's fees; or

(v) home office overhead.

(e) 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.

(i) 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.

(ii) 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.

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

(g) 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 or the Texas Government Code, Chapter 2260.

(h) In accordance with the Texas Civil Practice and Remedies Code, Section 114.011, TFC may pay a claim resolved under Section 10.15 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. Chapter 304 of the Texas Finance Code applies to a judgment awarded to a claimant, except that the applicable rate of interest may not exceed six percent (6%). Consistent with the Texas Civil Practice and Remedies Code, Section 114.011, property owned by the State or any unit of state government is not subject to seizure, attachment, garnishment, or any other creditors' remedy to satisfy a judgment on a breach of contract claim.

(i) 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 10.15.

**10.16. 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.

10.17. **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.

10.18. **NO WAIVER.** Nothing in this Agreement shall be construed as a waiver of sovereign immunity by the State of Texas. This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. 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 this 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. TFC does not waive any privileges, rights, defenses, or immunities available to TFC by entering into this Agreement or by its conduct prior to or subsequent to entering into this Agreement.

10.19. **FALSE STATEMENTS; BREACH OF REPRESENTATIONS.** By signature to this Agreement, A/E makes all the representations, warranties, guarantees, certifications and affirmations included in this Agreement. If A/E signs this Agreement with a false statement or it is subsequently determined that A/E has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Agreement, A/E shall be in default under this Agreement, and TFC may terminate or void this Agreement for cause and pursue other remedies available to TFC under this Agreement and applicable law.

10.20. **SURVIVAL OF TERMS.** Termination of the Agreement for any reason shall not release A/E from any liability of 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.

[This Space Intentionally Left Blank]

10.21. **ENTIRE CONTRACT AND MODIFICATION.** This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this 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: 

Kay Molina

General Counsel

Date of execution: 11/2/18

G.C.  F.S.

Dir. 

D.E.D. 

**IMEG CORP**

By: 

Print Name: ALI HAMI

Print Title: Principal

Date of execution: 12/20/17

**TFC CONTRACT NO. 18-122-000**

**IMEG CORP**

**EXHIBITS CD**