

**AMENDMENT NO. 1
TO THE
PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES
AGREEMENT
BETWEEN THE
TEXAS FACILITIES COMMISSION
AND
M. ARTHUR GENSLER JR. & ASSOCIATES, INC.**

This Amendment No. 1 to the Professional Architectural/Engineering Services Agreement (hereinafter referred to as “Amendment No. 1”) is entered into by and between 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*, Section 1.28) and M. Arthur Gensler Jr. & Associates, Inc. (hereinafter referred to as “A/E”) located at 1011 South Congress Avenue, Building 1, Suite 200, Austin, Texas 78704 (hereinafter referred to collectively as the "Parties") to amend the original Professional Services Agreement effective as of March 11, 2016 (hereinafter referred to as “Agreement”).

RECITALS

WHEREAS, on March 11, 2016, the Parties entered into that one certain *Professional Architectural/Engineering Services Agreement Between the Texas Facilities Commission and M. Arthur Gensler Jr. & Associates, Inc.* (hereinafter referred to as the “Agreement”); and

WHEREAS, the Parties desire to enter into this Amendment No. 1 for the purpose of changing the address given in the caption, to further change the Notices section of the Contract, and to include additional provisions adopted subsequent to the execution of the Agreement in order to reflect changes required by the Texas Legislature, or to comply with requirements of the State Auditor’s Office, the Office of the Attorney General, or the Comptroller of Public Accounts;

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

1. Unless clearly provided otherwise herein, all terms and phrases in initial caps herein shall have the same meaning as the terms and phrases with initial caps in the Agreement.
2. The Parties agree to modify the caption by deleting the address provided for A/E and replacing it with the following:

“1011 South Congress Avenue, Building 1, Suite 200, Austin, Texas 78704.”

3. The Parties agree to modify ARTICLE I – DEFINITIONS, by adding the following definition:

“*HUB Compliance Reporting System* means the Texas Facilities Commission Historically Underutilized Business (“HUB”) online reporting system located at

<https://tfc.gob2g.com>. The *HUB Compliance Reporting System* is used to maintain business records documenting compliance with the HUB Subcontracting Plan (“HSP”) by submission of monthly Progress Assessment Reports. See Section 11.2, Historically Underutilized Businesses (“HUBs”).”

“*Standard of Care* means A/E’s Standard of Care defined in Section 6.1.17.”

4. The Parties agree to modify ARTICLE III – TERM AND TERMINATION, Section 3.2, Early Termination, by adding Subsections 3.2.1 and 3.2.2., as follows:

“3.2.1. Rights Upon Termination or Expiration of Agreement. In the event that the Agreement is terminated for any reason, or upon its expiration, TFC shall retain ownership of all associated work products and documentation obtained from the A/E under this Agreement.

3.2.2. 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 Texas Government Code, Chapter 2260.”

5. The Parties agree to modify ARTICLE VI – WARRANTIES AND REPRESENTATIONS BY A/E, Section 6.1, Warranties and Representations by A/E, by deleting Subsection 6.1.15, Prohibition Against Boycotting Israel, and replacing it with Section 6.1.15, Entities that Boycott Israel, as follows:

“6.1.15 Entities that Boycott Israel. Pursuant to Section 2270.002 of the Texas Government Code, A/E certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. CMT shall state any facts that make it exempt from the boycott certification.”

6. The Parties agree to modify ARTICLE VI – WARRANTIES AND REPRESENTATIONS BY A/E, Section 6.1, Warranties and Representations by A/E, by adding Subsections 6.1.17 through and including 6.1.25, as follows.

“6.1.17. Standard of Care. Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, A/E shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

6.1.17.1. Pursuant to Texas Local Government Code Section 271.904(d), A/E hereby represents and warrants:

6.1.17.1.1. that it shall perform the Services with the professional skill and care ordinarily provided by competent engineers or architects practicing

under the same or similar circumstances and professional license;

6.1.17.1.2. that it shall perform the Services as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect; and

6.1.17.1.3. that each of the employees and agents assigned to perform A/E's obligations under this Agreement shall have the skill and training to perform the Services in accordance with the foregoing Standard of Care, and that all Deliverables shall be produced in a professional and workmanlike manner.

6.1.18. Disclosure of Former State Executives. Pursuant to Texas Government Code, Section 669.003 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

6.1.19 Certification Concerning Restricted Employment for Former State Officers or Employees Under Government Code § 572.069. A/E 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 A/E 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

6.1.20 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.

6.1.21. Disaster Relief Contract Violation. Under Sections 2155.006 and 2261.053 of the Texas Government Code, DBF certifies that the individual or business entity named in the response or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

6.1.22. Excluded Parties. Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

6.1.23. Suspension and Debarment. Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

6.1.24. Human Trafficking Prohibition. Pursuant to Section 2155.0061 of the Texas Government Code, A/E certifies that it is not ineligible to receive this agreement and acknowledges that this Agreement may be terminated and payment withheld if A/E's certification in this matter is inaccurate. TFC may not award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year (5) period preceding the date of the award, has been convicted of any offense related to the direct support or promotion of human trafficking.

6.1.25. Use of State Property. A/E is prohibited from using State Property for any purpose other than performing services authorized under the Agreement. State Property includes, but is not limited to: TFC's office space, identification badges, TFC information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TFC issued software, and the TFC Virtual Private Network (VPN client)), and any other resources of TFC. A/E shall not remove State Property from the continental United States. In addition, A/E may not use any computing device to access TFC's network or e-mail while outside of the continental United States. A/E shall not perform any maintenance services on State Property unless the Agreement expressly authorizes such services. During the time that State Property is in the possession of A/E, A/E shall be responsible for (i) all repair and replacement charges incurred by TFC that are associated with loss of State Property or damage beyond normal wear and tear; and (ii) all charges attributable to A/E's use of State Property that exceeds the scope of the Agreement. A/E shall fully reimburse such charges to TFC within ten (10) calendar days of A/E's receipt of TFC's notice of amount due. Use of State Property for a purpose not authorized by agreement shall constitute breach of contract and may result in termination of the Agreement and the pursuit of other remedies available to TFC under contract, at law, or in equity."

7. The Parties agree to modify ARTICLE X – INSURANCE, Section 10.02, Required Insurance Coverage, Subsection 10.2.1, Workers' Compensation and Employers' Liability Insurance, by deleting paragraph 10.2.1.1, in its entirety and replacing it with paragraph 10.2.1.1, as follows:

"10.2.1.1. Pursuant to Texas Labor Code §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. Owner is entitled, upon request and without expense, to receive copies of Subcontractor's written certifications."

8. The Parties agree to modify ARTICLE X – INSURANCE, Section 10.3, General Requirements for All Insurance, Subsection 10.3.3, Additional Policy Requirements, by deleting Paragraph 10.3.3.2 in its entirety and replacing it with Paragraph 10.3.3.2, as follows:

"10.3.3.2. the policy, or such other document(s) as may be acceptable to TFC, must obligate the insurer, or a third party acceptable to TFC, to notify the Texas

Facilities Commission, Attention: Insurance Specialist, P. O. Box 13047, Austin, Texas 78711 (e-Email: Insurance@tfc.state.tx.us), of any (i) non-renewal; (ii) cancellation; or (iii) material changes, in writing, as soon as is reasonably possible prior to any such non-renewal, cancellation, or change.”

9. The Parties agree to amend ARTICLE XI – MISCELLANEOUS PROVISIONS, as follows.

11.1. The following sentence is added to existing Subsections 11.1.1, Acts or Omissions, 11.1.2, Infringements, and 11.1.3, Taxes / Workers’ Compensation / Unemployment Insurance-Including Indemnity.

“THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE A/E TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TFC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TFC OR ITS EMPLOYEES (TEX GOV’T CODE SECTION 2254.0031).”

9.1. The following Subsections are inserted after Subsection 11.1.3, as 11.1.4 through and including 11.1.6, read in their entirety as follows.

“11.1.4. ENGINEERING AND ARCHITECTURE. A/E SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, 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 DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO A/E’S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE A/E OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO A/E, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY A/E WITH THE OFFICE OF THE TEXAS 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 TEXAS ATTORNEY GENERAL. A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TFC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TFC OR ITS EMPLOYEES (TEX GOV’T CODE SECTION 2254.0031).”

11.1.5. 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.

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

9.2. The following Subsection 11.2.1 is added as follows.

"11.2.1. Requirement to Utilize HUB Compliance Reporting System. Pursuant to Texas Administrative Code, Title 34 §§ 20.85(f)(1)(2) and 20.287(b), TFC administers monthly HUB Subcontracting Plan ("HSP") to include the Progressive Assessment Report ("PAR") compliance monitoring through a HUB Compliance Reporting System known as B2G. A/E and A/E's Subcontractors/Subconsultants must submit required PAR information into the B2G system as a condition of payment. Any delay in the timely submission of PAR information into the B2G system will be treated as a deficiency and the payment request will be subject to suspension until such deficiency has been resolved."

9.3. The following Subsection 11.7, Notices, by changing the address for A/E as follows.

"If to A/E: M. Arthur Gensler Jr. & Associates, Inc.
Attention: Kirk Funkhouser, Principal, Managing Director
1011 South Congress Avenue, Building 1, Suite 200
Austin, Texas 78704
Phone: (512) 867-8110
E-Mail: Kirk_Funkhouser@gensler.com"

9.4. The following Subsection 11.9.1 is added as follows.

"11.9.1. Cybersecurity Training Required. If A/E has 'access,' as that term is defined in 1 Tex. Admin. Code § 202.1, to any state computer system or database, then, pursuant to Tex. Gov't Code § 2054.5192, A/E and its subcontractors, officers, and employees shall complete a cybersecurity training program certified under Tex. Gov't Code §2054.519. The cybersecurity training program must be completed by the A/E and its subcontractors, officers and employees during the term and any renewal period of the Agreement. A/E shall verify completion of the training program to TFC pursuant to, and in accordance with, Tex. Gov't Code § 2054.5192."

9.5. The following Sections 11.28 through and including 11.30 are inserted, and Section 11.28, Entire Agreement and Modification, is renumbered as Section 11.31, so that the inserted and existing sections read in their entirety, as follows.

"11.28. 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.

11.29. Abandonment and Default. If A/E defaults on this Agreement, TFC reserves the right to cancel the Agreement without notice and either re-solicit or re-award the Agreement to the next best responsive and responsible respondent. 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.

11.30. Antitrust and Assignment of Claims. A/E represents and warrants that neither A/E nor any firm, corporation, partnership, or institution represented by A/E, or anyone acting for such firm, corporation or institution has (i) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (ii) communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business during the procurement process for this Agreement. A/E assigns to the State of Texas all of A/E's rights, title, and interest in and to all claims and causes of action A/E may have under the antitrust laws of Texas or the United States for overcharges associated with the Agreement.

11.31. 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.”

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10. All other terms and conditions of the Agreement not expressly amended herein shall remain in full force and effect.

Except as expressly amended above, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment No. 1 to be effective as of the date of the last party to sign.

TEXAS FACILITIES COMMISSION

M. ARTHUR GENSLER JR. & ASSOCIATES, INC.

By: ^{DocuSigned by:}
Mike Novak, Executive Director
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By: ^{DocuSigned by:}
Kirk Funkhouser, Principal, Managing Director
5E45978254F242E...

Mike Novak

Kirk Funkhouser

Executive Director

Principal / Managing Director

Date of Execution: 06/08/2020 | 12:33 PM CDT

Date of Execution: 06/08/2020 | 9:57 AM PDT

PM ^{DS}
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GC ^{DS}
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