



PROFESSIONAL SERVICES AGREEMENT

**MASTER ARCHITECT/ENGINEER SERVICES FOR
CAPITOL COMPLEX PROJECTS**

BETWEEN

**THE TEXAS FACILITIES COMMISSION
AND
PAGE SOUTHERLAND PAGE, INC.**

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AND

PAGE SOUTHERLAND PAGE, INC.

The Texas Facilities Commission (hereinafter referred to as “TFC” or the “Owner,” as defined herein), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701, and Page Southerland Page, Inc. (hereinafter referred to as “Master Architect/Engineer” or “Master A/E” as defined below), located at 400 West Cesar Chavez Street, 5th Floor, Austin, Texas 78701, enter into the following agreement for professional services (hereinafter referred to as the “Agreement”) pursuant to the Professional Services Procurement Act, Tex. Gov’t Code Ann. Ch. 2254, Subch. A (West 2016), to be effective as of the Effective Date (as defined below). Nothing in this Agreement shall be interpreted or construed to make Contractor (as defined below) a third-party beneficiary hereunder.

RECITALS

WHEREAS, TFC has determined that it requires architectural and engineering services of a consultant for its Capitol Complex Projects to be located in Austin, Texas; and

WHEREAS, in reliance upon the representations made by Master A/E in its response to TFC’s Request for Qualifications (“RFQ”) 303-6-01343, April 15, 2016, TFC has determined that Master A/E has demonstrated its competence and qualifications to provide the requested services; and

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

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

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

I. DEFINITIONS.

1.1. Unless specifically provided otherwise herein, all words and phrases in this Agreement in initial caps shall have the meanings set out in this Section 1.1. In the event of any conflict between the definitions in the *2015 Uniform General Conditions* (hereinafter referred to as “UGC”), and the *Supplementary General Conditions*, a digital copy of each of which is incorporated herein by reference for all purposes in Portable Document Format (“PDF”) on the compact disk attached hereto and labeled “TFC Contract No. 16-106-000 / Page Southerland Page,

Inc. / Exhibits CD” (hereinafter referred to as the “Exhibits CD”), and named therein as “Exhibit A,” and “Exhibit B,” respectively, in the A/E Guidelines (as defined in Section 1.1.4, below), or in any other document referenced herein and incorporated for all purposes, and the definitions in this Agreement, the definitions used in this Agreement shall control to the extent of the conflict.

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

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

1.1.3. *Architect/Engineer(s)* means, individually or collectively, the architectural and engineering service providers contracted by TFC to perform all of the professional architectural and engineering design services, and any licensed professionals and other personnel working under the Architect/Engineer’s supervision, or otherwise engaged by TFC to prepare the design for all or a portion of the Projects.

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

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

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

1.1.7. *Capitol Complex Master Plan or Master Plan* means the 2016 Texas Capitol Complex Master Plan, and any Approved updates thereto, which is incorporated by reference as if fully stated herein as “Exhibit E.”

1.1.8. *Capitol Complex Projects* means the projects described in Section 2.1.1.

1.1.9. *Cause* means to direct, manage and oversee on behalf of TFC and in a manner consistent with the terms of this Agreement so as to accomplish or produce an action and/or deliverable by another service provider that is required by or reasonably inferable from the service provider’s agreement with TFC. The word “Cause,” as defined herein, shall not be construed to

give rise to a claim or dispute between Master A/E and any service provider not in privity with Master A/E.

1.1.10. *Communication Protocol(s)* means the communication and tracking procedures to be utilized for interaction and reporting between TFC, CMA, Master A/E, Construction Managers, Contractors, any Subcontractors, SSE, and Architect/Engineers, including but not limited to, the use of any EPMCS utilized by TFC for the Projects.

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

1.1.12. *Conceptual Design Phase* means that stage of a Project culminating in the preparation and submission of a Conceptual Design Package that includes preliminary design or series of preliminary design alternatives based on CMA's and Master A/E's review of Owner's Design Program and the Master Plan. This phase includes CMA's and Master A/E's preliminary evaluation of alternative approaches to designing the Projects, taking into consideration the requirements of the Projects and the Program Budget.

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

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

1.1.15. *Construction Cost Limitation* means the maximum amount of funding that has been authorized by and is available to Owner to pay Construction Manager for the services and Work required under the Construction Contract, including any preconstruction services fee, Guaranteed Maximum Prices (including all construction management fees therein) and all change orders. The Construction Cost Limitation may be adjusted by Owner in its sole discretion from time to time as further assessments, and design and construction cost estimates are developed by the Project Team.

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

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

1.1.18. *Construction Manager-Agent* or *CMA* means the service provider TFC will engage as TFC's fiduciary agent to assist TFC with management and coordination of the overall design and construction program for Capitol Complex Projects. TFC will separately procure the professional design services of an Architect/Engineer for each of these Projects to prepare the Construction Documents for each respective Project. TFC will also separately procure the construction management services of a Construction Manager-at-Risk for each of the respective Projects. Therefore, and for purposes of clarity, the use of the title "Construction Manager-Agent" to describe this service provider is not intended to characterize such service provider as a construction manager-agent for a single project, as is contemplated by Tex. Gov't Code Ann. Ch. 2269, Subch. E (West 2016); but rather it is intended to describe the service provider's role as a *program manager* for a series of construction projects to assist TFC with services procured in the same manner as provided in Tex. Gov't Code Ann. Ch. 2254, Subch. A (West 2016), for management and coordination of the overall design and construction program for all of TFC's Capitol Complex Projects.

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

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

1.1.21. *Deliverables* means any and all drawings, specifications, cost estimates, photos, designs, studies, sketches, computer programs, field and laboratory data, reports, and other information, whether in printed or electronic media format, provided or furnished in appropriate phases by Master A/E in the performance of the Professional Services, which are specified to be delivered by Master A/E pursuant to the terms of this Agreement. Copies of and/or electronic access to any Deliverable to be provided to TFC hereunder, together with any transmittal or other information related to it, shall, when directed by TFC, be simultaneously issued and provided to TFC's CMA.

1.1.22. *Design Development Phase* means that phase of a Project that follows the Schematic Design Phase, and culminates in the preparation and issuance of detailed design documents that illustrate and incorporate Approved changes to the Schematic Design Documents, and include drawings, specifications, plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of a Project and to identify the quality levels of major materials and systems for architectural, life safety, fire

protection, civil, structural, mechanical and electrical disciplines, and such other elements and systems as may be appropriate.

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

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

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

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

1.1.27. *Final Completion* means that stage of completion by which all "punch-list" items identified in connection with the Substantial Completion of a Project have been corrected, completed, or otherwise addressed to the satisfaction of Owner, CMA, Master A/E, Architect/Engineer, all building inspectors, and all other Governmental Authorities, as evidenced by the issuance of a certificate of Final Completion signed by CMA, Construction Manager, and Architect/Engineer.

1.1.28. *Fixed Limit of Cost* means that portion of the Program Budget for all design and construction costs for the Project(s), as approved by Owner, including the costs for the procurement of furniture, fixtures and other equipment ("FFE") to be installed in the Project(s). Fixed Limit of Cost shall be established upon Approval of the Program Budget. The Fixed Limit of Cost may be adjusted up or down at any phase of a Project by Owner, in Owner's sole discretion, whether by use of any contingency budgeted by Owner or otherwise.

1.1.29. *Governmental Authorities* means all federal, state, and local governmental entities having jurisdiction over the Projects.

1.1.30. *Hourly Fee Rates* shall mean the rates for Additional Services set forth in the Schedule of Master A/E's Hourly Fee Rates for Additional Services, incorporated herein for all purposes as "Exhibit F."

1.1.31. *Laws and Regulations* means any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all Governmental Authorities, including those governing labor, equal employment opportunity, safety, and environmental protection,

including but not limited to, all applicable requirements of Title III of the Americans with Disabilities Act and the Texas Architectural Barriers Act and Texas Accessibility Standards found in Tex. Gov't Code Ch. 469 (West 2012 & Supp. 2015).

1.1.32. *Master A/E* means Page Southerland Page, Inc., the service provider engaged hereunder as a design professional pursuant to Tex. Gov't Code Ch. 2254 (West 2016) as TFC's fiduciary agent and primary design professional to advise and assist TFC with oversight, coordination and management of the overall design of the Capitol Complex Projects by each of the Architect/Engineers for the Projects in accordance with this Agreement.

1.1.33. *Master A/E Agreement, Contract, or Agreement* means this contract and all of the exhibits attached hereto and which are expressly identified herein to be incorporated as a part hereof, in addition to all amendments or supplements that may be mutually agreed upon by TFC and Master A/E, and any changes that may become effective in accordance with the provisions of this Contract, from time to time.

1.1.34. *Master A/E Project Manager* means the individual designated by Master A/E, and who must be Approved, as the contact person with specific authority to properly supervise and direct the duties and responsibilities of Master A/E, on behalf of Master A/E, pursuant to the terms and conditions of this Agreement, and who shall have decision-making authority to bind Master A/E with respect to the Services rendered in connection with this Agreement or the Projects.

1.1.35. *Master A/E Personnel* means all Master A/E's staff, Subcontractors, subconsultants and vendors of any tier who contract to perform any of Master A/E's obligations or duties hereunder, as shown in List of Master A/E's Key Personnel, incorporated herein for all purposes as "Exhibit G."

1.1.36. *Master A/E's Fee Schedule and Staffing Plan* is that fee schedule that provides for payment of Master A/E's fee and includes Master A/E's plan for staffing to be covered by Master A/E's fee, as described in Master A/E's Fee Schedule and Staffing Plan, incorporated herein for all purposes as "Exhibit H."

1.1.37. *Notice of Authorization* or *NOA* means the written authorization to proceed to the next phase of Master A/E's Services. Notice of Authorization is to be distinguished from a Notice to Proceed.

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

1.1.39. *Notice to Proceed* or *NTP* means the written authorization by TFC to proceed with commencement of Services.

1.1.40. *Owner, Texas Facilities Commission, or TFC* means and includes: the State of Texas, the Texas Facilities Commission, and any other agency of the State of Texas acting through the Texas Facilities Commission in connection with this Agreement.

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

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

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

1.1.44. *Professional Services Schedule* or *Schedule* means the schedule/timeline set out on the Exhibits CD and named therein as "Exhibit I," and which schedule/timeline sets out the deadlines in terms of a fixed number of days after a preceding deadline for completion and delivery of discrete portions of the Professional Services, which deadlines shall be calculated from the effective date of an NTP or subsequent NOA. At the discretion of TFC Project Manager(s) and as mutually agreed upon with Master A/E, the Professional Services Schedule may be revised and defined with more detail as the Projects develop.

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

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

1.1.45. *Program Budget* means the budget developed and maintained by the CMA for all aspects of the Design Program and the Projects. The Program Budget includes itemized costs for the design and construction for each of the Projects, and procurement of furniture, FFE to be installed in each of the Project(s), all land acquisition costs, and all legal fees and other expenditures required of TFC to develop and implement Design Program. The Program Budget shall appropriately allocate each applicable component of the Approved spending limit to specific line items of cost for each of the Projects and shall be presented to TFC for establishment of each Project's Fixed Limit of Cost and Construction Cost Limitation. The Program Budget may be adjusted from time to time by Owner in its sole discretion as further assessments, and design and construction cost estimates are developed by Project Team.

1.1.46. *Program Definition Phase* means the initial phase of the Project that precedes the Conceptual Design Phase and culminates in the issuance of the PMP and the Project Implementation Plan ("PIP") specific to each of the Projects.

1.1.47. *Program Management Plan* or *PMP* means a management plan for all Projects in the Design Program, to be developed by CMA and submitted to TFC within 90 days

after the Effective Date, which PMP shall also include the PIPs specific to each of the Projects, as more fully described in Article II.

1.1.48. *Program Master Schedule* shall mean a comprehensive schedule prepared and maintained by CMA for TFC, incorporating Project Schedules for each of the Projects, and integrating all major Project activities, including the following: (i) phasing and alternatives for accelerating completion based on detailed phasing plans developed by CMA; (ii) establishment of schedule milestones and procedure relationships to a level of detail acceptable to TFC; and (iii) identification of predecessor relationships among activities between project boundaries constructed under separate contracts.

1.1.49. *Progress Assessment Report* or *PAR* means the progress assessment report in such form as is prescribed by TFC and which has the same meaning as defined in UGC, Section 1.31.

1.1.50. *Project Analysis* has the same meaning as defined in Tex. Gov't Code § 2166.001(5) (West 2016).

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

1.1.52. *Project Schedule(s)* shall mean the schedule or schedules prepared by CMA and approved by Owner for execution of each of the Projects.

1.1.53. *Project Team(s)* means CMA, Master A/E, SSE, Architect/Engineer(s), Construction Manager(s), and any separate Contractors, consultants, or other service providers employed by TFC for the purpose of planning, programming, design, construction, and commissioning of the Projects. The constitution of the Project Team(s) may vary for each, and at different phases, of the Projects. The Project Team(s) will be designated by TFC and may be modified from time to time by TFC.

1.1.54. *Projects* means the Capitol Complex Projects which are planned for the capitol complex Sites and for which Services under this Contract are to be performed, as further defined in Article II.

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

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

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

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

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

1.1.57. *Schematic Design Phase* means that phase of a Project that follows the Conceptual Design Phase, culminating in the Architect/Engineer's preparation and issuance of Approved preliminary drawings and other documents, including but not limited to a site plan and preliminary building plans, sections and elevations, study models, perspective sketches, digital models, and alternative material selections.

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

1.1.59. *Services* means the services provided by Master A/E, Master A/E Personnel and/or by Subcontractors and/or consultants retained by Master A/E for the Projects.

1.1.60. *Site(s)* means the lands, areas, and/or buildings generally described in Article II as the capitol complex Sites, and indicated in the Contract Documents as being furnished by TFC as the Sites upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by TFC which are designated for the use of the Contractor, as further described in Article II.

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

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

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

1.1.64. *Subcontract* means any agreements between Master A/E and a Subcontractor.

1.1.65. *Subcontractor* means any Person that enters into an agreement with Master A/E to perform any part of the Professional Services required under this Agreement.

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

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

1.1.68. *Using Agency* has the same meaning as defined in Tex. Gov't Code § 2166.001(10) (West 2016).

1.1.69. *Work* means the physical construction and related services required by the Construction Documents to construct the Projects described in Section 2.1.1, and includes all other labor, materials, equipment and services provided or to be provided by the Construction Manager(s) to fulfill the Construction Manager(s) obligations. The Work may constitute the whole or a part of the Projects.

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

1.1.71. *Worksite(s)* has the same meaning as the defined term "Site(s)," as set forth in Section 1.1.60, above.

II. DESCRIPTION OF PROJECTS AND SCOPE OF SERVICES.

2.1. Description of Projects.

2.1.1. Capitol Complex Projects. The Projects include all aspects of Phase 1 of the Master Plan, as may be amended by TFC from time to time, for the planning, development, architecture, engineering, design, procurement, demolition, renovation and construction of facilities and improvements on the Sites described in Section 2.1.2, below. The Projects are described as follows:

2.1.1.1. One approximately 605,000 GSF Building at Congress Avenue and Martin Luther King Boulevard.

2.1.1.2. One approximately 421,000 GSF Building at Congress Avenue and 17th Street.

2.1.1.3. Five levels of underground parking under Congress Avenue from 16th Street to Martin Luther King Boulevard.

2.1.1.4. One Capitol Complex Physical Plant Annex at the Sam Houston Building.

2.1.1.5. Walkable underground thermal utility tunnels from the Physical Plant Annex to new building at Congress Avenue and 17th Street.

2.1.1.6. Landscaped Pedestrian Mall on Congress Avenue from 16th Street to Martin Luther King Boulevard.

2.1.2. Capitol Complex Sites. The Sites planned for development of the Projects are:

2.1.2.1. State of Texas Parking Lot #7 (across from the Texas State History Museum): One full block bounded by North Congress Avenue, Martin Luther King, Jr. Boulevard, Brazos Street, and 18th Street.

2.1.2.2. State of Texas Parking Lot #2 (directly west of the Lyndon B. Johnson (LBJ) Building): One half block bounded by North Congress Avenue, 17th Street, the LBJ Building, and 16th Street.

2.1.2.3. North Congress Avenue Right of Way extending from Martin Luther King, Jr. Boulevard to 15th Street.

2.1.2.4. Parking lot and service yard west of the Sam Houston Building (SHB): One half block bounded by SHB, 14th Street, San Jacinto Boulevard, and 13th Street.

2.1.2.5. Additional Street Right of Ways including:

2.1.2.5.1. 14th Street from Brazos Street to San Jacinto Boulevard

- 2.1.2.5.2. Brazos Street from 15th Street to 14th Street
- 2.1.2.5.3. 15th Street from Congress Avenue to Brazos Street
- 2.1.2.5.4. 16th Street from Congress Avenue to Brazos Street

2.2. Scope of Services. Master A/E agrees to timely deliver the Professional Services described below and in Master A/E's Detailed Scope of Services and Fee Schedule, attached hereto and incorporated herein for all purposes as "Exhibit J," pursuant to the Professional Services Schedule.

2.2.1. General Duties for Performance of Services.

2.2.1.1. Master A/E shall furnish or provide the architectural, engineering, scheduling, and all other Services necessary and/or reasonably inferable from this Agreement (regardless of whether expressly described herein), the Project Analysis (or the equivalent thereof), the Design Program, the Master Plan, and all other relevant data for the successful planning, design and construction of the Projects in accordance with TFC's requirements, as outlined in TFC's relevant data defining the Projects. The Professional Services shall include Basic Services, plus Additional Services as may be authorized by TFC.

2.2.1.2. Master A/E shall, in accordance with its Standard of Care, verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied by TFC and other members of the Project Team to Master A/E prior to being used by Master A/E in the performance of Services.

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

2.2.1.4. Master A/E shall take all necessary precautions to prevent damage to TFC's property, visible or concealed, including any rights of way, and shall reasonably restore the Sites to the condition existing prior to Master A/E's entry, including, but not limited to, repair of curbs, sidewalks, lawns and plantings unless otherwise agreed to with TFC.

2.2.1.5. Master A/E shall consult with TFC staff, and with any representatives of the Using Agency as may be directed by TFC, and become thoroughly familiar with: (i) the Project Analysis, or the equivalent thereof; (ii) the Design Program; and (iii) the Master Plan.

2.2.1.6. Master A/E shall inspect and timely become thoroughly familiar

with the Sites for the Projects.

2.2.1.7. Master A/E shall review and become thoroughly familiar with any and all relevant and existing Project, Site, and facilities studies and information.

2.2.1.8. Master A/E shall become familiar with requirements of the technical and design standards of TFC and Using Agency, including, but not limited to, the A/E Guidelines and Owner's Project Requirements ("OPR").

2.2.1.9. Master A/E shall assist Owner, as and when requested, in project presentations.

2.2.1.10. Master A/E understands and acknowledges that Master A/E has assumed the contractual obligation and fiduciary duty to Owner to advise and assist Owner in connection with the architecture and engineering for the Projects. In the fulfillment of the Standard of Care in Section 6.4 below, Master A/E shall perform the Services so as to advise and assist Owner to control and manage the cost of the Projects, the performance of the Services in accordance with the Professional Services Schedule and the Program Master Schedule, and the execution of the Projects according to the design requirements set forth in Construction Documents approved for the Projects. Master A/E shall fulfill its duty in good faith, and with care, candor, and loyalty, and make full disclosure to Owner of all information relating to such matters and advise and assist Owner so that Owner is able to make fully informed decisions relating to such matters that are in the Owner's best interest. Unless otherwise directed by Owner, the communications of Master A/E with respect to the Services shall be concurrently directed to CMA and TFC Project Manager(s), who shall jointly serve as Master A/E's points of contact to Owner. Nothing in this Contract shall be construed to limit or restrict the right of Owner to communicate directly with a service provider at any time. Owner expressly reserves such right hereunder, which right Owner intends to expressly reserve in all of Owner's contracts with the service providers. In no event shall Owner's election to initiate any such communication be deemed or construed to be an interference with the contractual relationship or rights of Master A/E or any service provider, or an abrogation of any rights of Owner under this Contract.

2.2.1.11. Promptly after conclusion of the Conceptual Design Phase for any Project and prior to commencement of any Project's Schematic Design Phase, Master A/E and its design team members involved in the development of the Conceptual Design Packages for the Projects shall meet with each Architect/Engineer and its design team members to ensure an efficient, coordinated and comprehensive transition of design responsibilities between Master A/E and each Architect/Engineer in an effort to minimize duplication of design-related activities between them. It is agreed, acknowledged, and understood by Master A/E that the Program requires the Architect/Engineer for each Project to assume, at or prior to commencement of each Project's Schematic Design Phase, full responsibility for the development of the Schematic Design Phase documents, Design Development Phase documents, and the Construction Documents for each respective Project.

2.2.2. Detailed Scope of Services; Program Definition Phase Services.

2.2.2.1. In coordination with CMA, Master A/E shall assist in the implementation of project management information systems, including management, oversight, and facilitation of the development of Owner's BIM and a BIM execution plan to be established based upon the form of the DRAFT ConsensusDOCS 301 BIM Addendum (2015 Edition) which is attached hereto and incorporated by reference herein as "Exhibit K."

2.2.2.2. In coordination with CMA, Master A/E shall develop performance specifications, such as CAD standards, symbology, and compatibility requirements, including such performance specifications for BIM shared file and CAD shared file systems required by the execution plan to be developed from the form of "Exhibit K", along with acceptance criteria for the final BIM submittal, and the validation tests of pre-final BIM submittals to be reviewed for compliance with the BIM execution plan prior to the Final Completion of each Project. Owner will Cause CMA to provide to Master A/E and Master A/E Personnel, free of charge, limited electronic access to use and make copies of BIM data and electronic files of Construction Documents and Owner's other Work Product in accordance with data use protocols to be recommended to Owner by the Master A/E in collaboration with the CMA and Approved by Owner for adoption and use in the delivery of the Projects. Such data use protocols shall be incorporated into the PMP and the applicable PIP as appropriate, and acknowledged and accepted by each project participant who is a recipient of the Owner's Work Product.

2.2.2.3. In coordination with CMA, evaluate and make a joint recommendation for the use of certain sustainable principles and guidelines, and include a cost-benefit analysis of various sustainability and energy-efficiency measures for implementation by the Project Team pursuant to Owner's Project Requirements. It is a Design Program requirement that all Projects be designed and constructed in accordance with the "green-building" requirements contained in the aforementioned joint recommendation as approved by TFC.

2.2.2.4. Master A/E shall, in collaboration with CMA, perform a comprehensive review and evaluation of the Project Analysis, the Design Program, Master Plan, and other relevant information, and make a joint recommendation to Owner on the adaptation and/or use thereof in connection with the development of CDPs and implementation of the PMP and PIPs. Master A/E shall further coordinate with CMA in the development of the PMP and each project-specific PIP.

2.2.2.5. Master A/E shall perform Project planning coordination with local government and utility providers as necessary to develop the CDPs.

2.2.2.6. As requested by CMA, Master A/E shall assist CMA in establishing cost controls for compliance with Owner's Fixed Limit of Cost.

2.2.2.7. As requested by CMA, Master A/E shall provide input to CMA regarding the Program Master Schedule, including establishment of durations for Architect/Engineer's Services.

2.2.3. Detailed Scope of Services; Conceptual Design Phase Services.

2.2.3.1. Master A/E shall develop for Owner's use the CDP for each Project which shall include criteria and information establishing the design parameters for each Project so that subsequently selected Architect/Engineers are able to develop design and construction documents in sufficient detail for construction management firms to prepare proposals responsive to a solicitation, and to enable Owner to enter into a negotiated contract with the construction management firm Owner selects as the proposer who offers the best value to Owner for a particular Project. Master A/E, in coordination with CMA, shall work with Owner's Project Manager, and Owner's legal and technical advisors to establish and advise how best to structure and develop the CDP. The CDP must contain sufficient information to convey Owner's intent, goals, criteria and be developed to specify the performance-based criteria, interior space requirements, material quality standards, concept layouts and conceptual design criteria, control cost estimates, and design and construction schedules for each of the Projects, in form and detail sufficient to enable Owner to solicit, receive and proceed with negotiation of architect/engineer agreements and construction manager-at-risk contracts based thereon. The CDP must be developed for each Project to include, at a minimum, each of the following:

2.2.3.1.1. A space allocation and sizing plan for each room and/or functional area will be provided. This space program shall also include a factor allotment for circulation and supporting spaces.

2.2.3.1.2. A floor plan, that is comprised of simple space plans and block diagrams, as appropriate, to show the relationship between the various uses in the planned facility, including the approximate sizes of each major functional area of the building. The floor plan only arranges major spaces and their affinities, allowing the Architect/Engineers to arrange/detail corridors, closets, machine rooms, and other details. Outer elevation views and three-dimensional rendering sections shall also be provided by Master A/E.

2.2.3.1.3. A schematic site plan showing the location of the proposed building(s) on the selected Site.

2.2.3.1.4. An outline of the specifications to be developed for the shell building, interiors and site work in sufficient detail to allow the architect/engineer firms to prepare design documents for the construction work required to deliver the Projects. General example specifications for some items, such as exterior doors, finishes in bathrooms or entry areas, and exteriors, may be provided to assure Owner of the wear capability and/or appearance as common for all facilities.

2.2.3.1.5. In coordination with CMA, prepare staging and sequence plans of work and establishment of the limits of construction so as to not interfere with Owner's operations.

2.2.3.1.6. Selection and performance specifications for building systems, such as mechanical, electrical and plumbing equipment, security items, IT closets/wiring, plumbing fixtures, and/or generators/panel boards/wiring loops/lighting systems, fire fixtures, hardware and locks, and energy management systems will be specified by Master A/E to support future common facilities maintenance for Owner. The outline specifications should

include an estimated range of the required capacities of the HVAC systems, and the estimated size of the electrical service for each planned facility. The development of CDPs will require the following disciplines and services: architecture, interior design, mechanical, electrical, plumbing, life safety, irrigation, structural, civil, utility infrastructure, landscape architecture, Building Information Modeling. As appropriate, Master A/E shall direct its subconsultants to prepare the documents described above to be included in each CDP. Master A/E shall oversee the activities of all subconsultants to verify that CDPs are complete and that all documents included in CDPs are properly interfaced. The foregoing CDP documents shall be signed and sealed by Master A/E and its subconsultants.

2.2.3.2. Master A/E shall take all reasonable steps as necessary to secure approvals of preliminary building designs, including CDPs, from the Texas State Preservation Board, Partnership Advisory Committee, Joint Oversight Committee on Government Facilities, and State Leadership as established in the Master Plan.

2.2.4. Detailed Scope of Services; Design Phase Services.

2.2.4.1. Master A/E shall assist in the selection and evaluation of the Architect/Engineers for each of the Projects.

2.2.4.2. At benchmark dates during the Schematic Design, Design Development and Construction Documents Phases, Master A/E shall review the Architect/Engineers' Drawings and Specifications for compliance to CDPs.

2.2.4.3. Master A/E shall assist CMA in Causing the Architect/Engineer for each Project to provide a design that allows for the construction of each Project within the applicable Construction Cost Limitation.

2.2.4.4. Master A/E shall determine the compliance with the CDPs of submittals, change requests and any substitute or "or-equivalent" materials and equipment proposed by other service providers.

2.2.4.5. As requested by CMA, Master A/E shall assist CMA in evaluating any service providers' value engineering proposals.

2.2.4.6. Master A/E shall assist Owner as necessary in project presentations and periodic progress updates.

2.2.4.7. Master A/E shall monitor each Architect/Engineer's compliance with the PMP and applicable PIP, and submit a report to CMA and Owner on a monthly basis regarding same. Master A/E shall promptly advise CMA and Owner of Architects/Engineer's deviation from the PMP and applicable PIP, and Cause appropriate corrective actions to be implemented by the Architect/Engineer to bring its Services into conformance with the PMP, and applicable PIP.

2.2.5. Detailed Scope of Services; Construction Phase Services.

2.2.5.1. Master A/E shall attend pre-construction conferences and partnering meetings between Owner, CMA, Construction Managers, Architect/Engineers, Site Services Engineer, and other Service Providers to discuss general and specific requirements of the construction contracts and communication protocols.

2.2.5.2. Master A/E shall determine the compliance with the CDPs of submittals, change requests and any substitute or “or-equivalent” materials and equipment proposed by other service providers.

2.2.5.3. As requested by CMA, Master A/E shall assist CMA and Owner in evaluating any service providers’ value engineering proposals.

2.2.5.4. Master A/E shall review specific RFIs submitted by the Construction Managers associated with requested design clarifications, workarounds, or substitutions at the request of CMA. Master A/E will provide documentation for objective evidence of any non-compliance with the CDPs.

2.2.5.5. Master A/E shall visit the site as necessary and appropriate to confirm that the Work proceeds in accordance with the requirements of the CDP.

2.2.5.6. In connection with Substantial Completion and Final Completion for each Project, Master A/E shall assist CMA as necessary in ensuring “punch-list items” are completed by the Construction Manager in accordance with each applicable CDP.

2.2.5.7. Master A/E shall monitor each Architect/Engineer’s compliance with the PMP and applicable PIP, and submit a report to CMA on a monthly basis regarding same. Master A/E shall promptly advise CMA and Owner of Architects/Engineer’s deviation from the PMP and applicable PIP, and Cause appropriate corrective actions to be implemented by the Architect/Engineer to bring its Services into conformance with the PMP, and applicable PIP.

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

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

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

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

2.2.6.4. Master A/E shall sign, seal and date, and shall Cause the

responsible architect(s) and engineer(s) to sign, seal and date, all documents, reports, Drawings and Specifications issued to TFC pursuant to the terms of this Agreement and in accordance with applicable Laws and Regulations.

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

2.2.6.6. No documents shall be issued, delivered, or released for any purpose without the prior written consent of TFC.

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

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

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

2.2.7.3. TFC, including by and through TFC Project Manager(s), reserves the right to extend any of the deadlines described above.

2.2.8. Inspections. TFC hereby reserves the right, if deemed appropriate by TFC in its sole discretion, to conduct reviews or inspections during the course of planning, pre-design, design, construction and commissioning of the Projects, and to require Master A/E to participate therein. However, such participation shall not relieve Master A/E of any of its obligations arising pursuant to this Agreement.

2.2.8.1. No inspections of the Projects conducted by TFC, either singularly or in the aggregate, shall reduce the level or extent of Master A/E's responsibilities arising pursuant to this Agreement. Neither the approval and/or final acceptance of a Project or any Deliverable, the payment of any Pay Application, nor the issuance of any Certificates of Final or Substantial Completion by TFC shall constitute, or be deemed to be, a release of Master A/E's obligation to perform and timely deliver the Professional Services and any Additional Services in a manner consistent with the Standard of Care in accordance with this Agreement.

III. TERM AND TERMINATION.

3.1. Duration. This Agreement shall be effective as of the Effective Date and shall terminate on August 1, 2021, unless extended by the parties by amendment to this Agreement or terminated earlier, as provided below.

3.2. Suspension, Default, and Termination.

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

3.2.2. Termination by Owner for Convenience. Owner shall have the right at any time and for any reason to terminate for convenience this Contract and any one or more tasks, in whole or in part, by giving written notice to Master A/E. Upon receipt of Owner's order or notice, Master A/E shall immediately discontinue services as directed therein, except as expressly directed otherwise therein. Master A/E shall thereafter do only such services and work as may be necessary to preserve and protect work already completed. In case of such termination, Master A/E shall be entitled to payment only for services and work satisfactorily performed prior to termination and reasonably performed thereafter in closing out any task in accordance with such notice. The foregoing shall be the sole remedy available to Master A/E in the event of such termination by Owner. In no event shall Master A/E be entitled to payment of lost profits, lost opportunity or any damages relating to services not performed due to such termination. Owner's right to terminate as provided herein shall not be construed as affecting in any way the rights, duties or obligations of the parties should Owner terminate this Contract for cause upon Master A/E's breach or default.

3.2.3. Termination by Owner for Cause.

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

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

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

3.2.3.1.3. disregards Applicable Law;

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

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

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

3.2.3.2. When any of the above reasons exist, Owner may, without prejudice to any other rights or remedies of Owner, which rights and remedies are expressly reserved herein, terminate the Agreement with Master A/E and:

3.2.3.2.1. take possession of all Work Product in the possession of Master A/E;

3.2.3.2.2. accept assignment of subcontracts pursuant to this Agreement; and

3.2.3.2.3. complete the Services by whatever reasonable method Owner may deem expedient.

3.2.3.3. In addition to the foregoing, if Owner at any time has reasonable grounds to believe that Master A/E is in default, or likely to default, in the performance of its obligations under this Agreement, Owner may request in writing, and Master A/E shall provide to Owner in writing within ten (10) days after receipt of Owner's request, adequate assurance of Master A/E's present and future ability to perform its obligations, failing in which Master A/E shall be deemed to be in material default of this Agreement. Master A/E's written response to such request shall include evidence sufficient to demonstrate Master A/E's ability to perform to the reasonable satisfaction of Owner. Owner's determination that Master A/E has failed to provide evidence sufficient and satisfactory to constitute adequate assurance of its ability to perform hereunder shall not be subject to challenge if Master A/E has failed to cure, within the time permitted under Section 3.2.3.1, a condition of default specifically referenced in Owner's written demand to cure such condition of default.

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

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

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

3.2.3.7. Nothing contained in this Section 3.2 shall require Owner to pay for any services or work under the terms of this Agreement which are unsatisfactory or which are not submitted in compliance with the terms of this Agreement. Owner shall not be required to make any payments to Master A/E when Master A/E is in default under this Agreement, nor shall this Article constitute a waiver of any right, at law or at equity, which Owner may have if Master A/E is in default, including the right to: terminate this Agreement; bring legal action for damages; or enforce specific performance of this Agreement. Nothing in this Agreement shall be construed as a waiver by Owner of its right to assert a claim for breach of contract with respect to any breach hereof, including any latent defect in Master A/E's Services, if the same was not actually discovered by Owner in sufficient time to report the same to Master A/E prior to expiration of the Contract Term or prior to TFC's termination of this Agreement for any reason.

IV. CONSIDERATION; PAYMENT CONDITIONS.

4.1. Contract Limit – Fees and Expenses.

4.1.1. Master A/E's Fees. In exchange for the timely delivery of the Professional Services as specified by this Agreement, Master A/E shall be paid a fee, including all reimbursable expenses, in an amount not to exceed One Million Five Hundred Ninety One Thousand Seven Hundred Fifty and No/100 Dollars (\$1,591,750.00), payable in accordance with Master A/E's Fee Schedule and Staffing Plan, Exhibit H and based upon the hours of service actually expended by Master A/E to properly complete the Services required under this Agreement. Master A/E's Fee includes: (i) lump sum fees allocated for each phase of each Project for Services properly performed; and (ii) a maximum amount for meetings and site visits requested by Owner or CMA in excess of those identified in the supporting documentation included with Master A/E's Fee Schedule and Staffing Plan, Exhibit H. Such supporting documentation shall be reviewed with Owner, and updated if determined necessary and appropriate by Owner in its sole discretion, on a biennial basis, with such Approved updates becoming amendments to this Agreement. In no event shall Master A/E's fees exceed the amount set forth above in this Section, unless an increase in Master A/E's fees is expressly permitted under this Agreement and approved by TFC. Master A/E will not be compensated for any Professional Services performed or delivered by Master A/E prior to the Effective Date of this Agreement or after its termination.

4.1.2. Submission of Pay Applications or Invoices. No more frequently than once per month, Master A/E shall submit a Pay Application to TFC for services performed and reasonable and necessary costs and expenses incurred through the last day of the previous month. TFC agrees to pay Master A/E in accordance with Tex. Gov't Code Ch. 2251 (West 2016), also known as the "Prompt Payment Act."

4.2. Proportional Payments. Payments shall be made to Master A/E monthly in proportion to the Services properly performed in accordance with Master A/E's Fee Schedule and Staffing Plan, Exhibit H.

4.3. Maximum Reimbursable Expenses. Reasonable lodging and traveling expenses shall be considered a Reimbursable Expense under this Agreement when professional and technical personnel of Master 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 Master 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://fmx.cpa.state.tx.us/fmx/travel/txtravel/index.php>, formerly known as the State of Texas Travel Allowance Guide for state employees. No Reimbursable Expenses shall exceed actual cost. In addition to those items specifically identified above as a Reimbursable Expense, permit fees and associated costs, certain other incidental direct expenses including, but not limited to, copying, telephone, data, and express mail services, and rental of special equipment or tools required in connection with provision of the Professional Services for the Project, may constitute a Reimbursable Expense; provided however, Master A/E must obtain the written Approval prior to incurring the expense. Approval may be granted only under those limited circumstances wherein such costs are not considered normal or customary basic services under this Agreement. All requests for reimbursement must be accompanied by such documentation which, in the judgment of TFC, allows for complete substantiation of the costs incurred.

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

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

4.6. Equitable Adjustment to Fees and/or Schedule for Extended Performance Due to Owner's Interference. Master A/E may, as hereinafter provided, claim an equitable adjustment to its Fees and/or the Program Master Schedule for extended performance that Master A/E demonstrates to have been caused by Owner's act of intentional interference with Master A/E's performance of this Agreement. An "Owner's act of intentional interference" shall be an act of Owner that impacts the performance of, or extends the time of Master A/E's performance of the Services: (i) which causes Master A/E's performance to be impacted or extended without any reasonable justification therefor; (ii) resulting in impacted or extended performance that would not have occurred but for such act of interference; and (iii) as to which Master A/E has delivered to Owner written notice of the occurrence, impact consequences, and recommendations for the elimination of such act of intentional interference, and Owner, with specific intent and without reasonable justification, fails or refuses thereafter to cease, or cause to be ceased, such act of intentional interference. In such case and subject to Section 4.6.1 below, Master A/E may claim, and Owner's liability shall be limited to, an equitable adjustment to its Fees for Master A/E's reasonable additional costs of impacts or extended performance during the period of Master A/E's extended performance commencing on the business day next following Owner's receipt of such notice and ending on the day that such act of intentional interference ends.

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

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

4.7. Payments to Subcontractors. For all services rendered, Master A/E's payment to Subcontractors is due within ten (10) days after receipt of payment from TFC and, when appropriate in the sole discretion of TFC, TFC may issue joint checks to Master A/E and Subcontractors.

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

4.9. Right to Withhold Payment. Notwithstanding anything in this Contract to the contrary, TFC shall not be obligated to make, and may withhold interest free, any payment to Master A/E under this Contract if any one or more of the following three (3) conditions exist: (i) Master A/E is in default of any of its obligations under this Contract, and fails to commence to correct, and continuously and diligently proceed to cure, such default within seventy-two (72) hours after

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

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

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

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

V. ACKNOWLEDGEMENT, COVENANTS, AND AGREEMENTS.

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

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

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

5.1.2.1. upon Master A/E's receipt of general and criminal background check clearance, assist Master A/E in obtaining such access to the Sites as is reasonably necessary to enable Master A/E to provide the Professional Services;

5.1.2.2. designate TFC Project Manager(s); and

5.1.2.3. provide intermediate reviews of the Work Product of Master

A/E as necessary to allow Master A/E to proceed with delivery of the Professional Services in a timely manner.

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

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

5.2.1. Timely Delivery of Conforming Services. Master A/E will, subject to Force Majeure events, as defined in Section 11.13 below, timely provide the Professional Services in conformity with, and as specified in, this Agreement, the UGC, the Supplementary General Conditions, any Special Conditions, and in the Construction Documents.

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

5.2.3. Limitation of Authority. Master A/E agrees that TFC Project Manager(s) shall not have any express or implied authority to vary or otherwise amend the terms and conditions of this Agreement in any way, or waive strict compliance with the terms and conditions of this Agreement, except as to the deadlines set out in Exhibit I, the Professional Services Schedule, pursuant to Section 2.2 above. Any deviation from a deadline must be approved by TFC Project Manager(s) in writing issued prior to the expiration of any such deadline.

5.2.4. Master A/E Safety. Master A/E and all Master A/E Personnel conducting work or Services for TFC shall abide by all OSHA rules and regulations provided by the Department of Labor, OSHA, Code of Federal Regulations, Chapter 29. Employees of Master A/E and Subcontractors shall be trained in accordance with Chapter 29, Occupational Safety and Health Regulations. Master A/E and Subcontractors shall inform TFC Project Manager(s) of their Hazardous Electrical Energy Control, Lockout/Tag-out Procedure. Master A/E's procedure must meet or exceed TFC's procedure as determined by TFC Project Manager(s). Work or Services 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, Master A/E must follow OSHA requirements as detailed in OSHA Regulations 1910.331-.399.

5.2.4.1. TFC, in its sole discretion, may at any time order in writing a temporary stand-down of Master A/E's performance of the Services ("Safety Stand-Down Order") as a result of any one or more Safety Incidents, whereupon Master A/E shall immediately direct

all Master A/E Personnel to stop all Services while Master A/E conducts a comprehensive review of Master A/E's safety management plan and any Site conditions affecting safety at any Project Site, for the purpose of: (i) identifying any safety hazards and unsafe working conditions; (ii) conducting safety training of Master A/E Personnel involved in performance of the Services who were or may have been exposed to harm in connection with such Safety Incident(s); and (iii) taking any corrective action that Master A/E determines to be necessary and appropriate to fulfill its obligations in accordance with this Agreement. Upon receipt of TFC's Safety Stand-Down Order, Master A/E shall not resume performance of the Services until it has issued to TFC a written report, which shall be due within forty-eight (48) hours of the receipt of TFC's Safety Stand-Down Order, detailing the course of action that Master A/E has taken, or plans to take, to resolve the Safety Incident(s) described therein, and to prevent the recurrence thereof. After reviewing such course of action with TFC, Master A/E shall, in the exercise of Master A/E's reasonable judgment, propose the date by which Master A/E will complete all corrective action. Services shall resume only upon TFC's delivery of further written notice to Master A/E withdrawing TFC's Safety Stand-Down Order, which notice of withdrawal shall not be issued until TFC is reasonably satisfied that Master A/E has sufficiently implemented all appropriate corrective action as necessary to enable Master A/E to safely resume Services, fulfill its contractual obligations set forth in this Agreement, and thereby avoid recurrence of the Safety Incident(s). Master A/E shall not be entitled to an adjustment of Master A/E's Compensation, or the Professional Services Schedule, as the result of TFC's issuance of a Safety Stand-Down Order. If Master A/E fails to implement the corrective action in the manner proposed by Master A/E and determined by TFC to be reasonably acceptable, such failure shall be deemed a material breach of this Agreement and TFC may, without further notice, terminate this Agreement for cause. In responding to any Safety Stand-Down Order, Master A/E's evaluation of the need for, and its plan of, corrective action shall be undertaken as an independent contractor, pursuant to Section 11.4, and nothing herein shall be construed or interpreted to mean that TFC has assumed or agreed to assume any duty of care to Master A/E Personnel, or to provide guidance or instruction as to Master A/E's means and methods for managing safety as required by this Agreement. Any action taken by TFC hereunder to enforce TFC's rights to require Master A/E to fulfill its safety obligations under this Agreement shall be deemed to be undertaken solely for the purpose of fulfilling TFC's contractual expectation of results in terms of delivery of the Projects without causing injury or harm to persons or property.

5.2.5. Cooperation. All project managers, employees, and associated Subcontractors of Master A/E shall cooperate with and assist each other and all other members of the Project Team retained by TFC.

5.2.6. Cooperation by Master A/E.

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

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

5.2.6.3. Master A/E agrees to employ competent personnel meeting the requirements set forth herein, who shall be satisfactory to TFC. Personnel assigned to perform Services may not be reassigned without the prior written approval by TFC Project Manager(s). TFC may request that Master A/E replace unsatisfactory Personnel, which request shall not be unreasonably denied.

5.2.6.4. Master A/E agrees to cooperate and coordinate its work and Services with that of other members of the Project Team. Upon discovery of an apparent conflict in the sequencing of work or Services with another Service Provider, Master A/E shall report the concern to TFC Project Manager(s).

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

5.2.7. E-Verify. (a) By entering into this Agreement, Master A/E certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of: (i) all persons employed to perform duties within the State of Texas, during the term of the Agreement; and (ii) all persons (including subcontractors) assigned by Master A/E to perform work or Services pursuant to the Agreement, within the United States of America. (b) Master 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 Master A/E, and Master 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. Master 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, Master A/E (including Subcontractors) shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

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

5.2.8.1. Master A/E Project Manager must be committed to the Project on a full- time basis. TFC reserves the right to Approve the appointment of Master A/E Project Manager and to demand that Master A/E Project Manager, and any of Master A/E's employees or Subcontractors, be removed and replaced if, in the sole opinion of TFC, their performance on the Projects is and/or was not adequate or their continued involvement with the Projects will, is, or has become, detrimental to the timely and successful completion of the Projects, 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.

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

5.2.9. Buy Texas. If Master A/E is authorized to make purchases under this Agreement, Master A/E certifies that Master A/E will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Tex. Gov't Code Ch. 2155 (West 2016).

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

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

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

5.2.13. General and Criminal Background Check.

5.2.13.1. Master A/E represents and warrants that neither Master A/E nor any of Master 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, Master A/E has fully advised TFC in writing as to the facts and circumstances surrounding the conviction(s).

5.2.13.2. All of Master 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 Master A/E.

5.2.13.2.1. All criminal background check forms for all of Master A/E employees and Subcontractors that will initially commence any work or Services 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 Master A/E.

5.2.13.2.2. The process must be satisfactorily completed for every employee and Subcontractor before they perform services at the Site.

5.2.13.2.3. All criminal background checks must be accomplished by the Texas Department of Public Safety (“DPS”), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of Master 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 Texas Facilities Commission 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 as “Exhibit M.” Master 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.

5.2.14. Equal Opportunity. Master A/E shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Master 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. Master 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. Master A/E shall include the above provisions in all Subcontracts pertaining to the Professional Services.

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

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

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

VI. WARRANTIES AND REPRESENTATIONS BY MASTER A/E.

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

6.1.1. Compliance with All Laws. Master 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 Master A/E to provide the goods or services required by this Agreement. Master A/E will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Master A/E agrees to be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Agreement. As part of its delivery of the Professional Services, Master A/E shall make itself familiar with and at all times shall observe and comply with all Laws and Regulations of all Governmental Authorities that in any manner affect performance under this Agreement.

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

6.1.2.1. Master A/E warrants that Master 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 Master A/E's senior management; and (iv) is without knowledge of any fact that would render any employee or Subcontractor ineligible to legally work in the United States.

6.1.2.2. Master A/E further acknowledges, agrees, and warrants that Master 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 Master 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, Master 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 Master A/E or any of its employees.

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

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

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

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

6.1.4. Standard of Care. Master A/E shall, in the performance of the Services, comply with the standard of care described herein. Notwithstanding anything to the contrary contained in this Agreement, Owner and Master A/E agree and acknowledge that Owner has entered into this Agreement in reliance on Master A/E’s construction and design management expertise to perform its obligations hereunder. Master A/E accepts that, by this Agreement, a relationship is hereby established between it and Owner whereby Owner will materially rely upon the Master A/E’s advice and assistance to be provided hereunder to make well-informed decisions concerning the effective management and timely delivery of the Projects within the Program Budget and Fixed Limit of Cost. Master A/E understands the complexity involved in this type of construction and the necessity of coordination of the performance of its Services with the Project Team. In addition to the foregoing, and in addition to the rights and remedies otherwise existing

under this Agreement, at law or in equity, Master A/E will perform, or cause to be performed, all Services expeditiously, and in no event later than is required to conform, as applicable, to the Program Master Schedule, Professional Services Schedule, and the Project Schedule, and shall do so with that degree of professional skill and care practiced by similar firms, using similar collaborative project planning methods, and having industry leading knowledge and skill engaged in providing similar services for major construction projects of comparable value in the United States under the same or similar circumstances. Master A/E will furnish efficient business administration and superintendence and perform the Services in such manner as to provide Owner the best value. Master A/E shall employ and exercise the professional judgment of its experienced and qualified construction professionals to provide Owner the Services as necessary and appropriate to enable Owner to manage and deliver the Projects as contemplated above, and in conformity with the design concepts and construction requirements established by Owner, and it is the intention of the parties that Master A/E shall, at all times, act in Owner's best interests with respect to the performance of the Services and the management of all aspects of the Projects. Master A/E shall, at all times, exercise exclusive direction and control, and shall be responsible for proper supervision of all its Master A/E Personnel, Subcontractors, and subconsultants while present on the Worksites and otherwise. The standard of care required hereunder shall not, however, be deemed to alter or expand Master A/E's common-law duty to Owner with respect to liability for, or the duty to indemnify, defend or hold Owner harmless under Article XI with respect to claims or liability for bodily injury or property damage, for which the standard of care hereunder shall be deemed and construed to be no greater than that imposed upon Master A/E by common law.

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

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

6.1.7. No Material Change in Qualifications or Responses to Request for Qualifications. Master A/E represents that all information contained in Master A/E's responses to TFC's RFQ No. 303-6-01343, dated April 15, 2016, including but not limited to Master A/E's statements and representations as to its history, experience, capabilities, litigation disclosure, financial information, and other qualifications are accurate and complete, and no material change

in circumstances has occurred that would cause Master A/E's responses to be untrue or materially different than what was originally stated.

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

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

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

6.1.11. Royalties and Licenses to Use Intellectual Property. Master A/E represents that it will pay all royalties and license fees due in connection with the Services. Master A/E warrants that neither the Services nor use of Master A/E's Work Product will infringe any patent or other proprietary right. Should Master A/E, in consultation with TFC, determine that Master A/E's proprietary information, data or systems will be used on the Projects, TFC agrees to enter into a licensing agreement as necessary to enable TFC to utilize Master A/E's proprietary information, data or system, in connection with the Projects, which license agreement shall be non-exclusive, perpetual, and not require further expenditure by TFC or its representatives for such purposes.

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

6.1.13. Additional Warranties. In performing its Professional Services for the Projects, Master A/E shall be bound by, and comply with, any warranties, representations, and/or promises of additional services included in Master A/E's response to the RFQ, dated April 15, 2016, incorporated herein for all purposes as "Exhibit N," but only to the extent any such warranties, representations, and/or promises of additional services are made therein.

6.1.14. Eligibility. Master 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

Tex. Gov't Code § 2155.004(b) (West 2016).

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

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

6.1.17. Disclosure of Former State Executives. Pursuant to Tex. Gov't Code § 669.003 (West 2012 & Supp. 2015) relating to contracting with an executive of a state agency, no Person who, in the past four (4) years served as an executive of TFC or any other state agency was involved with or has any interest in this Agreement or any Contract resulting from this Agreement. If Master A/E employs or has used the services of a former executive head of TFC or any other state agency, then Master 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 Master A/E, and the date of employment with Master A/E.

6.1.18. Financial Interest/Gifts. Pursuant to Tex. Gov't Code §§ 572.051 (West 2012 & Supp. 2015) and 2255.001 (West 2016) and Tex. Penal Code § 36.09 (West 2011 & Supp. 2015), Master A/E has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract. Pursuant to Tex. Gov't Code Ch. 573 (West 2012 & Supp. 2015) and § 2254.032 (West 2016), if applicable, Master A/E certifies that Master 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 Master A/E's company or corporation. Master 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 Master A/E will be dealing on behalf of TFC.

6.1.19. Prior Employment. Master 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 Master A/E's firm or corporation. Master 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 Master A/E will be dealing on behalf of TFC pursuant to the Tex. Gov't Code Ch. 573 (West 2012 & Supp. 2015) and § 2254.032 (West 2016). Furthermore, Master A/E certifies and agrees that if it employs any former employee of TFC, such employee will perform no work in connection with this Contract during the twelve (12) month period immediately following the employee's last date of employment at TFC.

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

VII. STATE FUNDING.

7.1. State Funding. This Agreement shall not be construed as creating any debt on behalf of the State of Texas and/or TFC in violation of Tex. Const. art. III, § 49 (West 2007 & Supp. 2015). In compliance with Tex. Const. art. VIII, § 6 (West 2007 & Supp. 2015), it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Agreement may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination. Furthermore, any damages due under this Agreement should not exceed the amount of funds appropriated for payment under this Agreement, but not yet paid to Master A/E, for the fiscal year budget in existence at the time of the breach.

VIII. COPYRIGHTS AND TRADEMARKS.

8.1. Copyrights. Master A/E agrees that all Deliverables provided pursuant to this Agreement are subject to the rights of TFC in effect on the date of execution of this Agreement. These rights include the right to use, duplicate and disclose such subject matter and data, in whole or in part, in any manner for alterations, additions, remodels or maintenance; and to have others do so including production of Deliverables in response to a public information request pursuant to Tex. Gov't Code Ch. 552 (West 2012 & Supp. 2015). If the Deliverables produced by Master A/E are subject to copyright protection, Master A/E hereby grants to TFC a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such and to authorize others to do so. Master A/E shall include appropriate provisions to achieve the purpose of this condition in all Subcontracts entered into that produce information subject to copyright protection.

8.1.1. Disclaimers. All such Deliverables furnished by Master A/E pursuant to this Agreement shall be considered instruments of its services in respect to the Project. It is understood

that Master A/E does not represent such Deliverables to be suitable for reuse on any other study or for any other purpose(s). If Master A/E, at TFC's request and authorization, verifies or adapts Master A/E's Deliverables for TFC's use on another study, Master A/E shall be compensated for redesign or new design, bidding, and construction administration services.

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

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

8.2. No Use of Name or Trademark. Master A/E agrees not to make any written use of or reference to TFC's name or registered or unregistered trademarks for any marketing, public relations, advertising, display or other business purpose or make any use of TFC's facilities for any activity related to the express business purposes and interests of TFC pursuant to this Agreement, without the prior written consent of TFC, which consent may be withheld or granted in TFC's sole discretion.

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

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

9.2. Inspections and Audits. Master 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 Master A/E where such records may be found, with or without notice by the Texas State Auditor's Office ("SAO"), the contracting agency or its contracted examiners, or the Office of the Texas Attorney General, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All Subcontracts shall reflect the requirements of this section. In addition, pursuant to Tex. Gov't Code § 2262.154 (West 2016), the SAO may conduct an audit or investigation of any entity receiving funds under this Agreement, including direct payments to Master A/E and indirect payments under a Subcontract to this Agreement; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation.

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

9.4. Confidentiality Provisions Applicable to Master A/E.

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

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

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

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

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

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

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

9.4.2.6. any information obtained from TFC regarding its pursuit or negotiation of agreements with any potential "Contracting Person" regarding a potential "Qualifying Project" as those terms are defined in Tex. Gov't Code § 2267.001 (West 2016), as the same may be amended from time to time, including, but not necessarily limited to, the names of the Contracting Person, including their representatives, (collectively, "Business Customers"); the parties to and substance of any agreements between TFC and said Business Customers; services and data provided, or to be provided, by or to said Business Customers; and the type, quantity and specifications of products and services purchased, leased, licensed or received, or to be purchased, leased, licensed or received, by Business Customers; and

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

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

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

9.4.3.2. Both during and after the conduct of its due diligence

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

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

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

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

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

9.6. Public Records. Notwithstanding any provisions of this Agreement to the contrary, Master A/E understands that TFC will comply with the Texas Public Information Act, Tex. Gov't Code Ch. 552 (West 2012 & Supp. 2015). If contacted by TFC, Master A/E will cooperate with TFC in the production of documents responsive to the request. Master A/E agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. Master 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, Master A/E will notify TFC's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced,

collected, assembled, or maintained in connection with this Agreement and/or any amendment to this Agreement. This Agreement and/or any amendment to this Agreement and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. Master 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, Master A/E is required to make any information created or exchanged with the State pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

X. INSURANCE.

10.1. Insurance Requirements. All persons who enter into an agreement to provide professional services (hereinafter referred to as “Agreement”), including, but not limited to, professional engineering services and/or professional architectural services, as defined in Tex. Gov’t Code Ch. 2254, Subch. A (West 2016) with the State of Texas, by and through TFC, must comply with the insurance requirements established hereunder before Master A/E is authorized to commence providing such professional services.

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

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

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

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

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

10.7. Master A/E's Duty to Review Its Insurance. Master A/E represents and acknowledges it has carefully reviewed its insurance program with its legal and risk advisors and believes its insurance policies comply with the insurance requirements in this Agreement, or will comply in accordance with Section 10.32 within thirty (30) days of the Effective Date, and further acknowledges a continuing obligation to ensure its insurance policies remain compliant herewith. Within 48 hours of a written request by Owner, Master A/E shall submit in electronic form for independent review by Owner's consultants, true and complete copies of Master A/E's policies of insurance, and include therewith a letter provided by Master A/E's broker, agent, or its applicable insurance carrier representative for each policy, certifying that the electronic copies of the policies as furnished are true and correct copies. In addition, upon conducting such review, if Owner's consultants determine Master A/E's insurance policies contain deficiencies that cause such policies to fail to comply with the requirements of this Agreement, Master A/E agrees to reimburse Owner for all costs and fees of its consultants incurred in attempting to resolve such policy deficiencies by modification or special endorsement thereof. Owner's review of Master A/E's policies of insurance shall in no way excuse Master A/E from any of the requirements set forth herein. In the event Owner enters into contract with Master A/E before any such deficiencies are resolved, Owner does not waive, but explicitly reserves, the right to bring, after: (i) the occurrence of any loss or damage for which insurance is required hereunder; or (ii) after the denial of a claim for coverage for such loss or damage, an action or Claim against Master A/E to recover directly from Master A/E any damages, including attorney's fees and other costs, Owner incurs as a result of Master A/E's failure to secure and maintain the insurance required hereunder. Master A/E acknowledges and agrees that any period of limitations shall not begin to run or, alternatively, shall be tolled until the time of the later of such occurrence or denial.

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

10.8.1. Master A/E's Certification. By execution of the Agreement, Master A/E thereby certifies, pursuant to Texas Labor Code, Section 406.096(a), that A/E provides workers'

compensation and employers' liability insurance for all employees employed on this public project with limits of not less than those required below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.9.12.1. bodily injury and Property damage on an "Occurrence" basis;

10.9.12.2. Premises & Operations Liability;

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

10.9.12.4. Personal and Advertising Injury Liability;

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

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

Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00
Products & Completed Operations Aggregate	\$2,000,000.00
Personal and Advertising Injury	\$1,000,000.00

If the limits of coverage required above are below the actual limits of coverage in Master A/E's primary commercial liability insurance policy, the above required limits of coverage shall be deemed to be automatically increased to the amount of such higher actual limits to avoid a gap in

coverage that would preclude coverage under the excess/umbrella policy for failure of the underlying policy to exhaust its policy limits.

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

Combined Single Limit Bodily Injury & Property Damage \$1,000,000.00

10.11. Excess Liability Insurance. Excess Liability Insurance over Employers' Liability, CGL, Commercial Automobile Liability Policies, with the limits shown below and with coverage that is primary and non-contributory to any other insurance (primary, umbrella, contingent or excess) maintained by Owner Group, following form over and affording coverage no less broad than the coverage in such underlying policies, including but not limited to: (i) additional insured status for Owner Group; (ii) designated construction project(s) general aggregate limit; (iii) waiver of subrogation; and (iv) notice of cancellation.

Excess Liability Insurance \$12,000,000.00

10.12. Professional Liability Insurance of Certain Master A/E Personnel. Master A/E shall not, without the Owner's prior written consent, engage any Master A/E Personnel who are design professional subconsultants to act for, in combination with, on behalf of, or under the direction or control of Master A/E in the performance of any Services required under this Agreement. Owner reserves the right to review and approve the Professional Liability Insurance of such subconsultants prior to offering its written consent.

10.13. Professional Liability Insurance. Professional Liability Insurance shall be provided by Master A/E to cover the professional liability arising out of or in connection with any negligent act, error or omission of all Master A/E Personnel, including all design professionals and any non-professional Master A/E Personnel, or any joint venture or other firm of Master A/E acting for, in combination with, on behalf of, or under the direction or control of Master A/E in the performance of any Services required under this Agreement, or arising from or in connection with the coordination, management or oversight of such Master A/E Personnel. This policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (i) bodily injury or property damage (except to the Master A/E) where coverage is provided on behalf of design professionals; (ii) habitational or residential operations; (iii) pollution, mold and/or microbial matter and/or fungus and/or biological substance; (iv) punitive, exemplary or multiplied damages; (v) professional liability of the Master A/E arising out of the negligence of such Master A/E Personnel or (vi) design/build services.

Professional Liability Insurance \$5,000,000.00 Claim/\$5,000,000.00 Aggregate

10.14. Cyber/Privacy Liability Insurance Policy. Cyber/Privacy Liability Insurance shall be provided by Master A/E to cover risk of loss to electronic data. The policy must include coverage

for electronic vandalism to electronic data, including coverage for a third party's willful electronic alteration of data, introduction of viruses which impact electronic data, unauthorized use of electronic data, or denial of service to web site or email destinations.

Cyber Liability Insurance

\$1,000,000 Claim/\$1,000,000 Aggregate

10.15. Endorsements. Each of Master A/E's liability insurance policies (excluding only Master A/E's workers' compensation/employers' liability and professional liability policies), shall be endorsed to provide that they are **primary to and non-contributing** with, any other insurance carried by, or for the benefit of Owner Group under the ISO CG 20 01 04 13 coverage form. It is the specific intent of the parties to this Agreement that all such insurance policies shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess) maintained by Owner Group, with Owner Group's insurance being excess, secondary and noncontributing. Insurance may be provided under a single limit policy, or two or more policies with combined limits for the required amount of coverage. Within thirty (30) days following receipt of Owner's request, Master A/E shall furnish to Owner a letter issued by any insurer of Master A/E confirming the extent to which the insurer's coverage of the Master A/E is at risk of being, reduced, diminished or exhausted by claims thereon. If any insurance Master A/E furnishes shall be, or become at risk of being, reduced diminished or exhausted by claims thereon, Master A/E agrees to supplement, increase and/or replace such insurance with other insurance to ensure that Master A/E has available at all times the coverage required hereunder for the continuation of its Services.

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

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

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

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

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

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

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

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

10.17.5.2. all policy endorsements required hereunder.

10.18. Notification. Master A/E or their insurance agent is obligated to notify the Texas Facilities Commission (Attn: TFC Insurance Analyst, Legal Services Division), P.O. Box 13047, Austin, Texas 78711, of any (i) non-renewal; (ii) cancellation; or (iii) material changes (except Workers Compensation and Auto Liability), in writing, at least 30 days prior to any such non-renewal, cancellation or change. All policies shall require at least ten (10) days' notice of cancellation to Owner in the event of non-payment of premiums by Master A/E.

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

10.18.1.1. a change in the policy period;

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

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

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

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

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

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

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

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

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

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

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

10.19.7. Deductibles. All deductibles and self-insured retentions shall be disclosed on the certificate, and shall be paid by, assumed by, for the account of, and at Master A/E's sole risk without any right of reimbursement. No deductible or self-insured retention shall exceed \$25,000 or \$250,000 in the case of Master A/E's Professional Liability Insurance, without prior written approval of Owner, except as otherwise specified herein. If Master A/E elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding the foregoing deductible amounts, Master A/E shall be obligated to grant Owner all rights against Master A/E to the same extent as if Master A/E had maintained the insurance required hereunder with a commercial insurer, including but not limited to additional insured status (as to liability policies other than Professional Liability Insurance and Workers' Compensation Insurance), primary and non-contributory liability, waivers of rights of recovery, other insurance clauses, and any other extensions of coverage required herein. Master A/E shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the same extent all of the foregoing would have been covered had Master A/E maintained the insurance required hereunder with a commercial insurer.

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

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

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

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

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

10.19.13. Professional Liability Policy. Include in writing on the certificate the “Retroactive-date” for this coverage

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

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

Texas Facilities Commission
Legal Services Division, 4th Floor
P O Box 13047
Austin, Texas 78711-3047

10.19.16. Distribution of Completed Certificates. Completed Certificates shall be distributed by Master A/E as follows:

10.19.16.1. Original shall be sent:

10.19.16.1.1. By Mail:

Texas Facilities Commission
Legal Services Division, 4th Floor
P O Box 13047
Austin, Texas 78711-3047

10.19.16.1.2. By E-Mail: Legal@TFC.State.Tx.us

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

10.21. Insurance Required to Commence Services. Excepting the provisions of Section 10.32, Master A/E shall not commence Services under this Contract until Master A/E has obtained all required insurance and until such insurance has been accepted by Owner’s Approval. Owner’s approval of Master A/E’s insurance shall not relieve or decrease the liability of Master A/E hereunder. Owner shall have no duty to pay or perform under this Agreement until all certificates of insurance and required insurance policies have been confirmed by Owner’s advisors to comply

with the requirements set forth herein. Master A/E's failure to fulfill these insurance requirements shall not be a basis for any adjustment to Master A/E's compensation or schedule. Owner reserves the right to terminate this Agreement for convenience without any expense or liability in the event Master A/E fails to secure all insurance required herein within ten (10) days of Master A/E's execution of the Agreement.

10.22. Failure to Obtain, Maintain, or Renew Insurance. If Master A/E fails to timely obtain, maintain, or renew the insurance required herein and to provide Owner with acceptable evidence thereof, Owner shall have the right, but not the obligation, to, among all other available remedies at law and in equity: (i) procure such insurance and reduce the amount of this Contract (or any other agreement between Owner and Master A/E) by the cost thereof; and/or (ii) deem as a material breach of this Contract Master A/E's failure to do so. Within five (5) calendar days of any cancellation or non-renewal of any required line of insurance coverage, Master A/E shall provide Owner a replacement certificate of insurance with all applicable endorsements included therewith. Owner shall have the right, in its sole discretion, to suspend Master A/E's performance or terminate this Contract should there be a lapse in coverage at any time during this Contract. In addition to any other remedies available to Owner, Owner shall have the right, upon Master A/E's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, to withhold any payment(s) which become due to Master A/E hereunder (or under any other agreement between Owner and Master A/E) until Master A/E demonstrates compliance with the insurance requirements of the Contract. At Owner's discretion, Master A/E may be disqualified from eligibility to participate in any other or future projects with Owner for failure to comply with the insurance requirements herein.

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

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

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

additional insured status to be provided by all Master A/E Personnel prior to their commencement of any work or services, or entering onto any Site in connection with the Project, and copies of this evidence shall be provided to Owner by Master A/E.

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

10.27. Policy Limits. The stated policy limits of each line of insurance coverage required herein are minimum only and it shall be Master A/E's responsibility to determine what policy limits in excess of such minimum limits are adequate, and the length of time each line of insurance coverage shall be maintained beyond any lengths of time set forth herein; insurance policy limits are not a limit of Master A/E's liability. The insurance requirements set out herein shall not be interpreted as any representation or warranty that the required insurance coverages and limits will necessarily be adequate to fully protect Master A/E. Unless otherwise set forth herein, Master A/E shall not cause or permit any required insurance to be cancelled or to lapse prior to the expiration of all common law, statutory and contractual warranty periods.

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

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

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

10.31. Release and Waiver. Master A/E hereby waives all rights of recovery and releases, and shall cause its subconsultants and subcontractors to release, Owner Group from any and all claims or causes of action whatsoever which Master A/E and/or its subconsultants or subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained

and/or required to be maintained by Master A/E and/or its subconsultants or subcontractors pursuant to the Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING RELEASE AND WAIVER SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF OWNER GROUP.

10.32 Compliance with the Insurance Requirements. Certain of the Master A/E's insurance policies (the "Policies") will require the conforming endorsements in order to comply with the insurance requirements of this Agreement. Owner's obligations under this Agreement are and shall remain expressly conditioned upon and subject to the issuance and receipt of valid, current and conforming Policies that comply with the insurance requirements of this Agreement, including any conforming endorsements, within 30 calendar days after the Effective Date hereof. Such conforming endorsements and policy forms shall be in form sufficient to enable Owner to receive the independent confirmation of its outside legal counsel that the Policies, as amended by such conforming endorsements, strictly comply with the insurance requirements of this Agreement, which insurance requirements shall remain in full force and effect, and shall not be deemed waived by the execution of this Agreement. The furnishing of such conforming endorsements and compliant policy forms shall be accomplished at no additional cost to Owner. Master A/E acknowledges and agrees that Owner expressly reserves all rights to enforce the failure to comply with insurance requirements herein as a material default by Master A/E under this Agreement.

XI. MISCELLANEOUS PROVISIONS.

11.1. Indemnification. TO THE MAXIMUM EXTENT ALLOWED BY LAW, MASTER A/E SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS TFC AND THE STATE OF TEXAS, THEIR AGENTS AND EMPLOYEES, FROM AND AGAINST ALL LIABILITY AND DAMAGES ACTIONS, CLAIMS, DEMANDS OR SUITS FOR ANY AND ALL INJURIES OR DAMAGES SUSTAINED BY ANY PERSON OR PROPERTY TO THE EXTENT CAUSED BY ANY NEGLIGENCE IN THE PERFORMANCE OF THE SERVICES REFERENCED HEREIN AND FROM ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER BOTH FEDERAL AND STATE WORKERS COMPENSATION LAWS, TEXAS TORT CLAIMS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE, CHAPTER 101), OR ANY OTHER SUCH LAWS. MASTER A/E SHALL ALSO INDEMNIFY, DEFEND, AND BE RESPONSIBLE FOR ALL DAMAGES OR INJURY TO PROPERTY OF ANY CHARACTER TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT, OMISSION OR MISCONDUCT OF MASTER A/E, MASTER A/E 'S AGENTS OR EMPLOYEES, IN THE MANNER OR METHOD OF EXECUTION OF THE SERVICES HEREIN TO BE PERFORMED; OR FROM FAILURE TO PROPERLY PERFORM THE SERVICES TO THE REQUIRED STANDARD STATED HEREIN; OR FROM DEFECTIVE WORK OR MATERIALS; OR FROM BREACH OF ANY REPRESENTATION OR WARRANTY HEREIN. THESE REQUIREMENTS SHALL SURVIVE THE TERM OR TERMINATION OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO TFC. MASTER A/E SHALL COORDINATE AND PROVIDE IN COOPERATION WITH THE

OFFICE OF THE ATTORNEY GENERAL THE DEFENSE OF TFC AND THE STATE OF TEXAS WHEN EITHER OF THEM ARE NAMED AS DEFENDANTS IN ANY LAWSUIT AND SSE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

11.1.1. Infringements. (a) MASTER A/E SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, 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 MASTER A/E PURSUANT TO THIS AGREEMENT. MASTER A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. MASTER A/E SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY MASTER A/E WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND MASTER A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. (b) MASTER 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 MASTER A/E'S WRITTEN APPROVAL; (iii) ANY MODIFICATIONS MADE TO THE PRODUCT BY MASTER 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. (c) IF MASTER A/E BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES MASTER A/E WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, MASTER A/E MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT MASTER A/E'S SOLE OPTION AND EXPENSE: (i) PROCURE FOR TFC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE; OR (ii) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TFC'S USE IS NON-INFRINGEMENT.

11.1.2. Taxes/Workers' Compensation/Unemployment Insurance—Including Indemnity. (a) MASTER A/E AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, MASTER A/E SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF MASTER A/E'S AND MASTER A/E'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. MASTER 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 MASTER 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. (b) MASTER 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. MASTER A/E SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY MASTER A/E WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND MASTER A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. MASTER A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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

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

11.2. Copyright Infringement. Master A/E shall, at its own expense, defend, or at its option settle, any suit or proceeding brought against TFC based on an allegation that the practice or use by TFC of any of Master A/E's Work Product, including Drawings, Specifications, Documents and engineering criteria such as methods, processes, techniques or procedures given to TFC in connection with Master A/E's performance of this Agreement, constitutes an infringement of any United States patent, trade secret, or copyright, if Master A/E is notified promptly in writing and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. Master A/E will pay any fines, penalties, and fees imposed as a result of said infringement and any damages and costs awarded in any suit or proceeding so defended. In case the process, as a result of any suit or proceeding so defended, is held to constitute infringement or its use by TFC is enjoined, Master A/E will, at its option and its own expense, either: (i) procure for TFC the right to continue using said process; (ii) replace it with a substantially equivalent non-infringing process; or (iii) modify the process so it becomes non-infringing.

11.3. Historically Underutilized Businesses ("HUBs"). In accordance with state law, it is TFC's policy to assist HUBs, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling Master

A/E's obligations with TFC. If Master A/E subcontracts with others for some or all of the services to be performed under this Agreement, Master A/E shall comply with all HUB requirements pursuant to Chapter 2161 of the Texas Government Code. When required, Master A/E shall submit an updated HUB Subcontracting Plan, the form for which is incorporated herein by reference for all purposes in PDF on the Exhibits CD, and named therein as "Exhibit O." Master A/E shall provide the HUB program of TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the HUB Subcontracting Plan PAR, the form for which is incorporated herein by reference for all purposes in PDF on the Exhibits CD, and named therein as "Exhibit P."

11.4. Relationship of the Parties. Master 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. Subject only to the terms of this Agreement, Master A/E shall have the sole right to supervise, manage, operate, direct and control the manner and means of the performance of the details incidental to its performance of the Services under this Agreement and in such respect, Master A/E is and shall be an independent contractor with respect to any third parties affected by Master A/E's acts or omissions in this regard. Master A/E agrees that TFC shall be entitled to have confidence in and rely upon Master A/E to undertake the rendering of Services in accordance with this Contract for and on behalf of TFC, and at all times to act in TFC's best interests with respect to the performance of the Services required hereunder. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of Master A/E or any other party. Master A/E shall be solely responsible for, and TFC shall have no obligation with respect to:

- 11.4.1. withholding of income taxes, FICA, or any other taxes or fees;
- 11.4.2. industrial or workers' compensation insurance coverage;
- 11.4.3. participation in any group insurance plans available to employees of the State of Texas;
- 11.4.4. participation or contributions by the State to the State Employees Retirement System;
- 11.4.5. accumulation of vacation leave or sick leave; or
- 11.4.6. unemployment compensation coverage provided by the State.

11.5. No Assignment and Subcontracts. Master A/E shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Agreement without the prior written consent of TFC. Notwithstanding the foregoing, it is mutually understood and agreed that Master A/E may engage Subcontractors to perform some or all of the Professional Services. In any Approved Subcontracts, Master A/E shall legally bind such Subcontractor to perform and make such Subcontractor subject to all the duties, requirements, and obligations of Master A/E specified herein. Nothing herein shall be construed to relieve Master A/E of the responsibility for ensuring that the goods delivered and/or the

services rendered by Master A/E and/or any of its Subcontractors comply with all the terms and provisions of this Agreement. Master A/E must provide written notification to TFC of any such Subcontractor performing work under this Agreement, including the name and taxpayer identification number of Subcontractor, the task(s) being performed, and the number of Subcontractor employees expected to work on the task.

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

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

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

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

Email: kay.molina@tfc.state.tx.us

With a copy to: Texas Facilities Commission
Attention: John S. Raff, Deputy Executive Director
1711 San Jacinto Boulevard, Suite 400
Austin, Texas 78701

Email: john.raff@tfc.state.tx.us

If to Master A/E: Page Southerland Page, Inc.
Attention: Robert E. Burke, Executive Vice President

400 West Cesar Chavez Street, 5th Floor
Austin, Texas 78701

Email: BBurke@Pagethink.com

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

11.9. Name and Organizational Changes. Master A/E must provide TFC with written notification of all name changes and organizational changes relating to Master A/E including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change. Master A/E, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for Master A/E, Master A/E shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Contract and Master 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 Master A/E or successor entity, as applicable, to maintain its status as a party to this Contract. TFC may terminate the Contract due to any change to Master A/E that materially alters Master A/E's ability to perform under the Contract.

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

11.11. 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 pursuant to this Agreement shall be in a court of competent jurisdiction in Travis County, Texas. Master A/E hereby irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on

the grounds of forum non conveniens, which it may now or hereafter have to the bringing of, or responding to, any action or proceeding in such jurisdiction with respect to this Agreement or any document related hereto.

11.12. 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. Master A/E acknowledges that this Agreement is effective only for the period of time specified in the Agreement.

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

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

11.13.2. If possible, the notice shall set forth the extent and duration thereof.

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

11.14. Dispute Resolution. Claims, disputes, and other matters in question arising out of or relating to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institutions of legal or equitable proceedings by either party. Failure to follow the dispute resolution process below shall result in any claim filed by Master A/E in a court of law having jurisdiction over the claim to be summarily dismissed. 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:

11.14.1. Claims for Breach of Contract and Counterclaims.

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

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

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

11.14.1.4. TFC must assert, in a writing delivered to Master A/E, any counterclaim not later than the sixtieth (60th) day after the date of notice of a claim under Section 11.14.1.2 above.

11.14.1.5. Damages.

11.14.1.5.1. The total amount of money recoverable on a claim for breach of contract under this Section may not, after deducting the amount specified in Section 11.14.1.5.2 below, exceed an amount equal to the sum of:

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

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

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

11.14.1.5.2. Any amount owed the unit of state government for work not performed under a contract or in substantial compliance with its terms shall be deducted from the amount in Section 11.14.1.5.1 above.

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

11.14.1.5.3.1. consequential or similar damages, except delays or labor-related expenses described by Section 11.14.1.5.1.3 above;

- 11.14.1.5.3.2. exemplary damages;
- 11.14.1.5.3.3. any damages based on an unjust enrichment theory;
- 11.14.1.5.3.4. attorney's fees; or
- 11.14.1.5.3.5. home office overhead.

11.14.2. Negotiation.

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

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

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

11.14.3. Mediation.

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

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

11.14.4. Adjudication. On or after the two hundred seventieth (270th) day following the date the claim is filed with TFC, unless the parties agree in writing to an extension of time, Master 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.

11.14.5. Payment of Claims.

11.14.5.1. In accordance with the Texas Civil Practice and Remedies Code, Section 114.011, TFC may pay a claim resolved under Section 11.14 only from money appropriated to it for payment of contract claims or for payment of the contract that is the subject of the claim. If money previously appropriated for payment of contract claims or payment of the

contract is insufficient to pay the claim or settlement, the balance of the claim may be paid only from money appropriated by the legislature for payment of the claim.

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

11.14.5.3. 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.

11.14.6. Representation of TFC. The Office of the Texas Attorney General shall defend TFC in any proceeding or adjudication conducted in conjunction with a claim brought under this Section 11.14.

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

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

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

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

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

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

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

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

11.20. No Waiver of Sovereign Immunity. Except as may be expressly and specifically provided otherwise by Chapter 114, Texas Civil Practice and Remedies Code, nothing in this Agreement shall be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas, TFC, or Using Agency. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under the Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

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

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

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

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

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

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

- 11.26.1. Exhibit A. UGC;
- 11.26.2. Exhibit B. Supplementary General Conditions;
- 11.26.3. Exhibit C. [Intentionally Left Blank];
- 11.26.4. Exhibit D. A/E Guidelines;
- 11.26.5. Exhibit E. 2016 Capitol Complex Master Plan (Adopted) and Approved updates located at this link: <http://www.tfc.state.tx.us/divisions/commissionadmin/tools/>;
- 11.26.6. Exhibit F. Schedule of Master A/E's Hourly Fee Rates for Additional Services;
- 11.26.7. Exhibit G. List of Master A/E's Key Personnel;
- 11.26.8. Exhibit H. Master A/E's Fee Schedule and Staffing Plan;
- 11.26.9. Exhibit I. Professional Services Schedule;
- 11.26.10. Exhibit J. Master A/E's Detailed Scope of Services and Fee Schedule;
- 11.26.11. Exhibit K. DRAFT ConsensusDOCS 301 BIM Addendum (2015 Edition);
- 11.26.12. Exhibit L. [Intentionally Left Blank];
- 11.26.13. Exhibit M. Texas Facilities Commission Criminal Background Checks and Application Information;
- 11.26.14. Exhibit N. Master A/E's response to RFQ, dated April 15, 2016;
- 11.26.15. Exhibit O. HUB Subcontracting Plan Form; and
- 11.26.16. Exhibit P. HUB Subcontracting Progress Assessment Report (PAR) Form.

11.27. Approval Not a Release. Approval by TFC shall not constitute nor be deemed a release of the responsibility and liability of Master A/E, Master A/E Personnel, its employees, Subcontractors, agents and consultants for the accuracy and competency of the Services and Work Product; nor shall such approval be deemed to be an assumption of such responsibility by TFC for any defect, error or omission in the Services, Work Product or other Documents prepared by Master A/E, Master A/E Personnel, its employees, subcontractors, agents and consultants. TFC's approval or acceptance of Master A/E's tasks and/or Services will not release Master A/E from

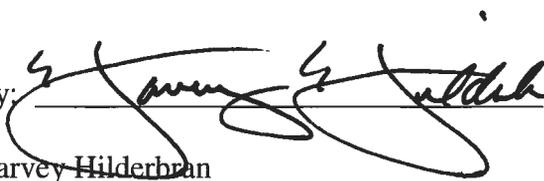
any liability for such tasks and/or Services because TFC is, at all times, solely relying upon Master A/E's skill, knowledge and expertise in performing its tasks and Services.

11.28. Survival of Terms. Termination of the Agreement for any reason shall not release Master A/E from any liability or obligation set forth in the Agreement that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution and invoice and verification.

11.29. 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 Master A/E agrees is it not acting in reliance on any such extraneous matters. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistently with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification, renewal, extension, or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

TEXAS FACILITIES COMMISSION

PAGE SOUTHERLAND PAGE, INC.

By: 
Harvey Hilderbran

By: 
Robert E. Burke

Executive Director

Executive Vice President

Date of Execution: 7-21-16

Date of Execution: 7-21-16

G.C. 

Dir. 

D.E.D. 

PAGE SOUTHERLAND PAGE, INC.

TFC CONTRACT NO. 16-106-000

EXHIBITS CD