

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TEXAS FACILITIES COMMISSION  
AND  
PAUL HORNSBY & COMPANY**

The Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 and Paul Hornsby & Company (hereinafter referred to as "Appraiser"), located at 7600 North Capital of Texas Highway, Suite B210, Austin, Texas 78731 enter into the following contract for consulting services (hereinafter referred to as the "Agreement") pursuant to Texas Government Code, Chapter 2254, Subchapter B (Vernon 2016 & Supp. 2016).

**I. SCOPE OF SERVICES.**

**1.01. DESCRIPTION OF SERVICES.** The project for which Appraiser agrees to provide professional appraisal services is a 17,664 square foot tract of land improved with a surface parking lot, located at the northwest corner of Colorado Street and West 9<sup>th</sup> Street, Austin, Texas (hereinafter referred to as the "Property"), which serves the adjacent E. O. Thompson State Office Building. Professional appraisal services to be provided are depicted in Appraiser's Proposal and Fee Schedule dated March 20, 2017, "Exhibit A," attached hereto and incorporated herein for all purposes, and include the following.

(a) Estimate the market value of the fee simple interest in the subject Property as of the date of inspection. The land will be appraised (i) at its highest and best use; and (ii) in accordance with the design for the Property as an office/parking facility. The improved Property will be appraised as proposed to be developed.

(b) Estimate the current market ground rent, base term, and renewal options under the above two scenarios.

(c) Estimate the current market rent for the parking spaces proposed to be developed (business day and after hours). Project the market rent for the base term and options.

(d) Allocate the market value of the Property as improved between the parking and office components for base term and options.

(e) Estimate the prospective future value of the Property at the point of reversion to the State of Texas (ground lease expiration).

(f) Provide advisory services relating to a request for proposal, developer responses thereto, and developer interviews, concerning the E. O. Thompson Parking Structure and Development Project.

## II. TERM.

2.01. **DURATION.** This Agreement shall be effective as of the date executed by the last party, and shall terminate on September 30, 2017 unless extended by the parties by amendment to this Agreement or terminated earlier, as provided below.

2.02. **EARLY TERMINATION.** This Agreement may be terminated by either party by giving written notice specifying a termination date at least thirty (30) days subsequent to the date of the notice. Upon receipt of any such notice, Appraiser shall immediately cease work and undertake to terminate any relevant subcontracts and shall incur no further expense related to this Agreement. Such early termination shall be subject to the equitable settlement of the respective interests of the parties accrued up to the date of termination.

## III. CONSIDERATION.

3.01. **CONTRACT LIMIT AND FEES AND EXPENSES.** (a) The total amount of this Agreement shall not exceed the sum of Twenty Five Thousand and No/100 Dollars (\$25,000.00), inclusive of reimbursable expenses. All fees and expenses that may be payable pursuant to this Agreement shall be as set forth and specified in the Agreement, and will be determined as a result of negotiations between the parties based upon the services to be rendered.

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

3.02. **PROMPT PAYMENT.** Appraiser shall be paid in accordance with Chapter 2251 of the Texas Government Code, also known as the "Prompt Payment Act". Any Appraiser services performed or delivered by Appraiser prior to the effective date of this Agreement or after the termination of this Agreement cannot be compensated.

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

**IV. APPRAISER'S REPRESENTATIONS, RESPONSIBILITY AND LIABILITY.**

4.01. **PERFORMANCE REPRESENTATIONS.** (a) Appraiser represents that all services provided by Appraiser under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Appraiser represents that any work which is specified to be delivered under this Agreement and which is to be paid for by TFC (collectively, the "Deliverables") under this Agreement shall be:

(i) completed in a manner consistent with standards in the applicable trade, profession, or industry; and

(ii) conform to or exceed the specifications set forth in this Agreement.

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

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

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

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

**V. APPRAISER GENERAL AFFIRMATIONS**

5.01. **FINANCIAL INTERESTS/GIFTS.** (a) Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, Appraiser has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement.

(b) Pursuant to Texas Government Code, Chapter 573 and Section 2254.032, if applicable, Appraiser certifies that Appraiser 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 Appraiser's company or corporation. Appraiser 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 Appraiser will be dealing on behalf of TFC.

**5.02. PRIOR EMPLOYMENT.** Appraiser 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 Appraiser's firm or corporation. Appraiser 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 Appraiser will be dealing on behalf of TFC pursuant to the Texas Government Code, Chapter 573 and Section 2254.032. Furthermore, Appraiser certifies and agrees that if it employs any former employee of TFC, such employee will perform no work in connection with this Agreement during the twelve (12) month period immediately following the employee's last date of employment at TFC.

**5.03. ELIGIBILITY.** Appraiser certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate pursuant to Texas Government Code, Section 2155.004(b).

**5.04. FAMILY CODE.** Pursuant to the requirements of the Texas Family Code, Section 231.006, 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, Appraiser shall provide 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. Appraiser acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**5.05. DEBTS OR DELINQUENCIES TO STATE.** Appraiser understands and agrees that any payment due under this Agreement may be applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support pursuant to Texas Government Code, Section 403.055.

**5.06. GENERAL AND CRIMINAL BACKGROUND CHECKS.** (a) Appraiser shall conduct, or has conducted, a criminal background check at its own expense on each of its employees engaged in providing services under this Agreement prior to the commencement of such services. Appraiser's employee shall be eligible to perform services for the Company if he or she, to such Appraiser's knowledge: (i) has not been convicted of or was placed in a pre-trial diversion program for any crime involving dishonesty or breach of trust including, but not limited to, check kiting or passing bad checks; embezzlement, drug trafficking, forgery, burglary, robbery, theft, perjury; possession of stolen property, identity theft, fraud, money laundering, shoplifting, larceny, falsification of documents; and/or (ii) has not been convicted of any sex, weapons or violent crime including but not limited to homicide, attempted homicide, rape, child molestation, extortion, terrorism or terrorist threats, kidnapping, assault, battery, and illegal weapon possession, sale or use.

(b) Appraiser represents and warrants that Appraiser and Appraiser's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Appraiser has fully advised TFC as to the facts and circumstances surrounding the conviction.

**5.07. E-VERIFY.** By entering into this Agreement, Appraiser certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of: all persons employed to perform duties within the State of Texas, during the term of the Agreement; and all persons, including subcontractors, assigned by the Appraiser to perform work pursuant to the Agreement, within the United States of America. Appraiser 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 Appraiser, and Appraiser'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. Appraiser shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Agreement. For persons not eligible for E-Verify screening, Appraisers, including subcontractors, shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

**5.08. BUY TEXAS.** If Appraiser is authorized to make purchases under this Agreement, Appraiser certifies that Appraiser will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Texas Government Code, Chapter 2155.

**5.09. EQUAL OPPORTUNITY.** Appraiser shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Appraiser 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. Appraiser agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this non-discrimination article. Appraiser shall include the above provisions in all subcontracts pertaining to the work.

**5.10. DECEPTIVE TRADE PRACTICE ; UNFAIR BUSINESS PRACTICES.** Appraiser represents and warrants that it has not been found liable of Deceptive Trade Practices violations under Texas Business and Commerce Code, Chapter 17, or of any unfair business practice in any administrative hearing or court suit. Appraiser further certifies that it has no officers who have served as officers of other entities who have been found liable of Deceptive Trade Practices violations or of any unfair business practices in an administrative hearing or court suit. In the event that allegations of Deceptive Trade Practices violations under Texas Business and Commerce Code, Chapter 17, or of any unfair business practices against either Appraiser or any of Appraiser's officers are currently pending in an administrative proceeding or in a lawsuit filed with any court, then Appraiser shall

disclose all such pending matters to TFC and provide a brief description of each allegation, information regarding the administrative body or court before which the matter is pending, and the current status of the matter.

5.11. **AGENCY EXECUTIVE HEAD.** Under Texas Government Code, Section 669.003 relating to contracting with an executive of a state agency, Appraiser represents that no person who, in the past four (4) years served as an executive of TFC or any other State agency, was involved with or has any interest in this Agreement or any contract resulting from this Agreement. If Appraiser employs or has used the services of a former executive head of TFC or any other State agency, then Appraiser shall provide the following information: the Name of the former executive, the name of the State agency, the date of separation from State agency, the position held with Appraiser and the date of employment with Appraiser.

#### **VI. STATE FUNDING.**

6.01. **STATE FUNDING.** (a) This Agreement shall not be construed as creating any debt on behalf of the State of Texas and/or TFC in violation of TEX. CONST. art. III, § 49. In compliance with TEX. CONST. art. VIII, § 6, it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Agreement may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

(b) Appraiser agrees that this Agreement is a pass-through obligation of the state or local responsible government entity that has retained TFC for assistance in determining the feasibility of the P3 projects and procurement thereof. Appraiser agrees that TFC's obligation to pay Appraiser is limited to amounts TFC actually receives from the responsible governmental entity and that TFC's obligation to pay under this Agreement is contingent upon TFC's receipt of such funds. Furthermore, any damages otherwise due under this Agreement should not exceed the amount of funds appropriated by the Texas Legislature for payment under this Agreement, but not yet paid to Appraiser, for the fiscal year budget in existence at the time of the breach; provided, however, the foregoing shall not be construed as a waiver of sovereign immunity.

#### **VII. COPYRIGHTS AND RIGHTS IN DATA.**

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

**7.02. DISCLAIMERS.** All such Deliverables furnished by Appraiser pursuant to this Agreement shall be considered instruments of its services in respect to the respective project. It is understood that Appraiser does not represent such Deliverables to be suitable for reuse on any other study or for any other purpose(s).

**7.03. DELIVERY TO TFC.** Appraiser 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.

**7.04. 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 projects.

**7.05. NO USE OF NAME OR TRADEMARK.** Appraiser 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.

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

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

**8.02. INSPECTION & AUDIT.** Appraiser 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 Appraiser where such records may be found, with or without notice by the Texas State Auditor's Office, the contracting agency or its contracted examiners, or the Texas Attorney General's Office, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect the requirements of this section. In addition, pursuant to Texas Government Code, Section 2262.154, the SAO may conduct an audit or investigation of any entity receiving funds under this Agreement, including direct payments to the Appraiser and indirect payments under a subcontract to this Agreement; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation.

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

by TFC, or from the date of termination of the Agreement, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation which may ensue.

**8.04. CONFIDENTIALITY.** Appraiser shall keep confidential all information, in whatever form, produced, prepared, observed or received by Appraiser to the extent that such information is:

- (i) confidential by law;
- (ii) marked or designated "confidential" (or words to that effect) by TFC; or,
- (iii) information that Appraiser is otherwise required to keep confidential by this Agreement.

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

**8.05. PUBLIC RECORDS.** Notwithstanding any provisions of this Agreement to the contrary, Appraiser understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552. If contacted by TFC, Appraiser will cooperate with TFC in the production of documents responsive to the request. Appraiser agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. Appraiser 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, Appraiser 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. This Agreement and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. Appraiser 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, Appraiser is required to make any information created or exchanged with the State pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

**8.06. ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS.** (a) Effective September 1, 2006, all state agencies and institutions of higher education shall procure products which comply with the State of Texas accessibility requirements for electronic and information resources specified in Title 1 of the Texas Administrative Code, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(a) If applicable, Appraiser shall provide the Texas Department of Information Resources ("DIR") with the universal resource link, also known as URL, to its Voluntary Product

Accessibility Template ("VPAT") for reviewing compliance with the State of Texas accessibility requirements (based on the Federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Appraisers not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

## **IX. INSURANCE AND LEGAL OBLIGATIONS**

9.01. **INSURANCE.** Prior to the commencement of work under this Agreement, Appraiser agrees to carry and maintain insurance in the following types and amounts for the duration of this Agreement, and furnish certificates of insurance, and make available copies of policy declaration pages and policy endorsements as evidence thereof:

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

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

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

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

- (i.) Waiver of Subrogation endorsement;

- (ii.) thirty (30) day Notice of Cancellation endorsement; and,
- (iii.) Additional Insured endorsement.

(d) Professional liability insurance with a minimum limit of \$1,000,000.00 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed with respect to plans, maps, drawings, analysis, reports, surveys, change orders, designs, or specifications prepared by the insured. Appraiser shall maintain coverage for the duration of this Agreement and for not less than twenty-four (24) months following completion of the Project, whichever is longer.

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

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

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

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

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

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

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

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

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

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

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

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

9.03. **LEGAL OBLIGATIONS.** Appraiser 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 Appraiser to provide the goods or services required by this Agreement. Appraiser will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Appraiser agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Agreement.

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

10.01. **INDEMNIFICATION. (a) ACTS OR OMISSIONS. APPRAISER SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMERS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF APPRAISER OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY APPRAISER WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND APPRAISER MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE**

CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. APPRAISER AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

(b) INFRINGEMENTS. APPRAISER SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF APPRAISER PURSUANT TO THIS AGREEMENT. APPRAISER AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. APPRAISER SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY APPRAISER WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND APPRAISER MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. APPRAISER 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 APPRAISER'S WRITTEN APPROVAL; (iii) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE APPRAISER PURSUANT TO TFC'S SPECIFIC INSTRUCTIONS; (iv) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TFC; OR (v) ANY USE OF THE PRODUCT OR SERVICE BY TFC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT. IF APPRAISER BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES APPRAISER WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, APPRAISER MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT APPRAISER'S SOLE OPTION AND EXPENSE; (i) PROCURE FOR TFC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE; OR (ii) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TFC'S USE IS NON-INFRINGEMENT.

(c) TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE - INCLUDING INDEMNITY. APPRAISER AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, APPRAISER SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF APPRAISER'S AND APPRAISER'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. APPRAISER 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 APPRAISER, 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. APPRAISER 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. APPRAISER SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY APPRAISER WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND APPRAISER MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. APPRAISER AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

10.02. **SUBCONTRACTS.** Appraiser shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Agreement without the prior written consent of TFC. Notwithstanding this provision, it is mutually understood and agreed that Appraiser may subcontract with others for some or all of the services to be performed. In any approved subcontracts, Appraiser shall legally bind such sub-Appraiser to perform and make such subcontractor subject to all the duties, requirements, and obligations of Appraiser specified herein. Nothing herein shall be construed to relieve Appraiser of the responsibility for ensuring that the goods delivered and/or the services rendered by Appraiser and/or any of its subcontractors comply with all the terms and provisions of this Agreement. Appraiser will provide written notification to TFC of any such sub-Appraiser performing work under this Agreement, including the name and taxpayer identification number of subcontractors, the task(s) being performed, and the number of subcontractor employees expected to work on the task.

10.03. **IMMIGRATION REFORM.** (a) The Immigration Reform and Control Act of 1986 and 1990 requires that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by all Appraisers and subcontractors who contract with the State. Appraiser shall not place any employee of Appraiser at a worksite, nor shall Appraiser permit any employee, nor any subcontractor, to perform any Professional Services on behalf of or for the benefit of the State, without first confirming said employee's authorization to lawfully work in the United States.

(b) Appraiser warrants that Appraiser: (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 Appraiser's senior management; and (iv) is without knowledge of any fact that would render any employee or subcontractor ineligible to legally work in the United States.

(c) Appraiser further acknowledges, agrees, and warrants that Appraiser: (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, including, without limitation, the completion and maintenance of the Form I-9 for each of Appraiser'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, Appraiser 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 Appraiser or any of its employees.

(d) Appraiser acknowledges, agrees, and warrants that all subcontractors permitted by it to perform Professional Services will be required to agree to these same terms as a condition to being awarded any subcontract for such work.

**10.04. DRUG FREE WORK PLACE.** Appraiser, Appraiser's employees and subcontractors shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Appraiser, Appraiser's employees and subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**10.05. NO SMOKING.** All facilities where work is to be performed are nonsmoking buildings. Appraiser's employees and subcontractors are prohibited from smoking in all areas except in areas designated for smoking.

**10.06. RELATIONSHIP OF THE PARTIES.** Appraiser 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, Appraiser is and shall be an independent contractor. Subject only to the terms of this Agreement, Appraiser shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of Appraiser or any other party. Appraiser shall be solely responsible for, and TFC shall have no obligation with respect to:

- (i) withholding of income taxes, FICA or any other taxes or fees;

- (ii) industrial or workers compensation insurance coverage;
- (iii) participation in any group insurance plans available to employees of the State of Texas;
- (iv) participation or contributions by the State to the State Employees Retirement System;
- (v) accumulation of vacation leave or sick leave; or,
- (vi) unemployment compensation coverage provided by the State.

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

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

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

For Appraiser: Paul Hornsby & Company  
Attention: Paul Hornsby, MAI, SRA, President  
7600 North Capital of Texas Highway, Suite B210  
Austin, Texas 78731  
Phone: (512) 477-6311  
E-Mail: paul@paulhornsbyandco.com

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

**10.9. NAME AND ORGANIZATIONAL CHANGES.** Appraiser must provide TFC with written notification of all name changes and organizational changes relating to Appraiser including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change. Appraiser, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Agreement. If the change entails personnel changes for personnel performing the responsibilities of the Agreement for Appraiser, Appraiser shall identify the new

personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Agreement and Appraiser 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 Appraiser or successor entity, as applicable, to maintain its status as a party to this Agreement. TFC may terminate the Agreement due to any change to Appraiser that materially alters Appraiser's ability to perform under the Agreement.

**10.10. GOVERNING LAW AND VENUE.** This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Agreement shall be in a court of competent jurisdiction in Travis County, Texas. Appraiser irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Agreement or any document related hereto. **Nothing in this section shall be construed as a waiver of sovereign immunity by TFC.**

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

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

**10.13. FORCE MAJEURE.** (a) Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Agreement, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure" including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods, earthquakes, hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, TFC may terminate this Agreement immediately upon written notification to Appraiser.

(b) Changes in the schedule or in the design or scope of a Project as a result of any Force Majeure which affect the cost of the Appraiser's services under this Agreement shall be approved by TFC by amendment to this Agreement.

10.14. **DISPUTE RESOLUTION.** Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by the parties to attempt to resolve all disputes arising under this Agreement.

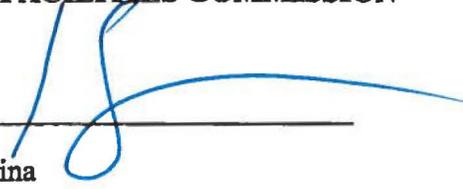
10.15. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.

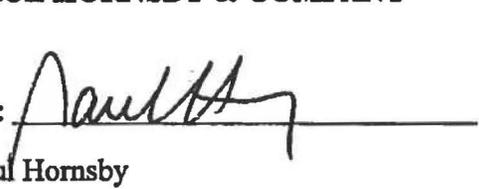
10.16. **SURVIVAL OF TERMS.** Termination of the Agreement for any reason shall not release Appraiser from any liability of obligation set forth in the Agreement that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution and invoice and verification.

10.17. **ENTIRE CONTRACT & MODIFICATION.** This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistently with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification, renewal, extension or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

**TEXAS FACILITIES COMMISSION**

**PAUL HORNSBY & COMPANY**

By:   
Kay Molina

By:   
Paul Hornsby

General Counsel

President

Date of execution: \_\_\_\_\_

Date of execution: 4/4/17

G.C.   
Dir.   
D.E.D. 

**EXHIBIT A**

**TFC CONTRACT NO. 17-068-000**

**APPRAISER'S PROPOSAL AND FEE SCHEDULE**



# PAUL HORNSBY & COMPANY

APPRAISERS AND CONSULTANTS

Paul Hornsby, MAI, SRA  
 Eli Hanslik, MAI  
 Chris Hornsby, MAI  
 Melany Adler, MAI  
 Katie Daniewicz, MAI  
 Clifford Shaw, ASA  
 Matthew Cox, Appraiser Trainee

Kimberly Garvey, Appraiser Trainee  
 Kayla Carter, Appraiser Trainee  
 Justin Sims, Appraiser Trainee  
 Jason Thomas, Analyst  
 Terri Bowden, Business Manager  
 Michelle Williamson, Bookkeeper/Administrative Support

March 20, 2017

Dan Vickers  
 Texas Facilities Commission  
 P.O. Box 13047  
 Austin, Texas 78711-3047

Re: Proposal for appraisal and consulting services relating to a 17,664 SF tract of land improved with a surface parking lot at the northwest corner of Colorado Street and West 9<sup>th</sup> Street, Austin, Texas

Dear Mr. Vickers:

As requested, I am pleased to provide this proposal for appraisal and consulting services relating to the property captioned above. Terms of the assignment are summarized below.

Subject Real Estate:

A 17,664 SF tract of land improved with a surface parking lot at the northwest corner of Colorado Street and West 9<sup>th</sup> Street, Austin, Texas.

Scope of Work:

- (1) Estimate the market value of the fee simple interest in the subject property as of the date of inspection. The land will be appraised (1) at its highest and best use and (2) in accordance with the design for the property as an office/parking facility. The improved property will be appraised as proposed to be developed.
- (2) Estimate the current market ground rent, base term, and renewal options under the above two scenarios.

- (3) Estimate the current market rent for the parking spaces proposed to be developed (business day and after hours). Project the market rent for the base term and options.
- (4) Allocate the market value of the property as improved between the parking and office components for the base term and options.
- (5) Estimate the prospective future value of the property at the point of reversion to the State (ground lease expiration).
- (6) Provide consulting services relating to a Request for Proposal, developer responses thereto, and developer interviews, concerning the E.O. Thompson Parking Structure and Development Project.

**Assignment Standards:**

All work will be undertaken in conformity with and subject to the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation and the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.

**Fee:**

The fee is payable monthly, as incurred, at the following hourly rates, and will not exceed \$25,000.

Paul Hornsby: \$395/hour

MAI Staff Appraisers: \$295/hour

State Certified Appraisers: \$195-\$225/hour

Land Planning: \$175/hour

Research Staff: \$150/hour

Administrative Staff: \$75/hour

**Completion:**

The appraisals will be completed within 60 days from your written authorization to proceed. Consulting services will be completed on a mutually acceptable schedule.

If these terms are acceptable, please indicate by executing this agreement and returning one copy to me. I look forward to working with you on this assignment.

Respectfully Submitted,  
Paul Hornsby & Company



Paul Hornsby, MAI, SRA  
President, Paul Hornsby & Company

Accepted:

Texas Facilities Commission

Acceptance in accordance with TFC Contract No. 17-068-000

\_\_\_\_\_  
By: Dan Vickers

\_\_\_\_\_  
Date