

**PROFESSIONAL ARCHITECTURAL/ENGINEERING
SERVICES AGREEMENT**

BETWEEN

THE TEXAS FACILITIES COMMISSION

AND

[INSERT ARCHITECTURAL/ENGINEERING FIRM]

TABLE OF CONTENTS

I. DEFINITIONS 1

1.1. Definitions 1

1.1.1. Additional Services 1

1.1.2. A/E Guidelines 1

1.1.3. A/E Project Manager 1

1.1.4. Application for Final Payment 2

1.1.5. Budget 2

1.1.6. Buildings 2

1.1.7. CAD 2

1.1.8. Certificate of Final Completion 2

1.1.9. Certificate of Substantial Completion 2

1.1.10. Change Order 2

1.1.11. Close-out and Record Documents Deadline 2

1.1.12. Close-out Documents 2

1.1.13. Communication Protocol 2

1.1.14. Consideration 2

1.1.15. Construction Costs 2

1.1.16. Construction Documents 2

1.1.17. Construction Documents–65% A/E Deadline 3

1.1.18. Construction Documents–65% A/E Reply 3

1.1.19. Construction Documents–65% A/E Reply Deadline 3

1.1.20. Construction Documents-65% Cost Estimate 3

1.1.21. Construction Documents–65% Review Deadline 3

1.1.22. Construction Documents–65% TFC Comments 3

1.1.23. Construction Documents–65% TFC Comments Deadline 3

1.1.24. Construction Documents–90% A/E Deadline 3

1.1.25. Construction Documents–90% A/E Reply 3

1.1.26. Construction Documents–90% A/E Reply Deadline 4

1.1.27. Construction Documents-90% Cost Estimate 4

1.1.28. Construction Documents–90% Review Deadline 4

1.1.29. Construction Documents–90% TFC Comments 4

1.1.30. Construction Documents–90% TFC Comments Deadline 4

1.1.31. Construction Documents–100% A/E Deadline 4

1.1.32. Construction Documents–100% A/E Reply 4

1.1.33. Construction Documents–100% A/E Reply Deadline 4

1.1.34. Construction Documents-100% Cost Estimate 4

1.1.35. Construction Documents–100% Review Deadline 5

1.1.36. Construction Documents–100% TFC Comments 5

1.1.37.	Construction Documents–100% TFC Comments Deadline	5
1.1.38.	Construction Documents–TFC NOA.....	5
1.1.39.	Construction Documents–TFC NOA Deadline	5
1.1.40.	Contract Documents	5
1.1.41.	Contractor	5
1.1.42.	DD Documents	5
1.1.43.	DD Documents–A/E Deadline.....	5
1.1.44.	DD Documents–A/E Reply.....	5
1.1.45.	DD Documents–A/E Reply Deadline	5
1.1.46.	DD Documents–Review Deadline.....	6
1.1.47.	DD Documents–TFC Comments	6
1.1.48.	DD Documents–TFC Comments Deadline	6
1.1.49.	DD Documents–TFC NOA.....	6
1.1.50.	DD Documents–TFC NOA Deadline	6
1.1.51.	DD Phase Cost Estimate	6
1.1.52.	Deliverables	6
1.1.53.	Design Program	6
1.1.54.	Drawings	6
1.1.55.	Effective Date	6
1.1.56.	EPMCS	6
1.1.57.	Final Completion	6
1.1.58.	Final Inspection.....	6
1.1.59.	Final Inspection Deadline	7
1.1.60.	Final Payment	7
1.1.63.	Governmental Authorities.....	7
1.1.64.	Initial Conceptual Drawings	7
1.1.65.	Initial Conceptual Drawings–A/E Deadline	7
1.1.66.	Initial Conceptual Drawings–A/E Reply	7
1.1.67.	Initial Conceptual Drawings–A/E Reply Deadline.....	7
1.1.68.	Initial Conceptual Drawings–Review Deadline.....	7
1.1.69.	Initial Conceptual Drawings–TFC Comments.....	7
1.1.70.	Initial Conceptual Drawings–TFC Comments Deadline	7
1.1.71.	Laws and Regulations	7
1.1.72.	MEP Systems	8
1.1.73.	Notice of Authorization	8
1.1.74.	Notice of Termination.....	8
1.1.75.	Notice to Proceed.....	8
1.1.76.	Order-of-Magnitude Opinion of Probable Construction Cost	8
1.1.77.	PAR.....	8
1.1.78.	Pay Application.....	8
1.1.79.	Periodic Reports.....	8
1.1.80.	Person	8

1.1.94.	Post-Final Inspection Punchlist.....	8
1.1.95.	Post-Final Inspection Punchlist Deadline	8
1.1.81.	Pre-Design Deadline	9
1.1.82.	Pre-Design Task Report.....	9
1.1.83.	Pre-Design Tasks	9
1.1.84.	Pre-Final Inspection Punchlist	9
1.1.85.	Pre-Final Inspection Punchlist Deadline.....	9
1.1.86.	Professional Services	9
1.1.87.	Professional Services Schedule.....	9
1.1.88.	Project	10
1.1.89.	Project Analysis	10
1.1.90.	Proposed Change Orders	10
1.1.91.	Record Documents.....	10
1.1.92.	Reimbursable Expenses	10
1.1.93.	RFI	10
1.1.94.	RFI Response.....	10
1.1.95.	RFI Response Deadline	10
1.1.96.	Schematic Design–A/E Deadline.....	10
1.1.97.	Schematic Design–A/E Reply.....	10
1.1.98.	Schematic Design–A/E Reply Deadline	10
1.1.99.	Schematic Design Drawings	10
1.1.100.	Schematic Design Package	11
1.1.101.	Schematic Design Phase Cost Estimate.....	11
1.1.102.	Schematic Design–Review Deadline.....	11
1.1.103.	Schematic Design–TFC Comments	11
1.1.104.	Schematic Design–TFC Comments Deadline.....	11
1.1.105.	Schematic Design–TFC NOA.....	11
1.1.106.	Schematic Design–TFC NOA Deadline	11
1.1.107.	Scope of Services.....	11
1.1.108.	Site	11
1.1.109.	Special Conditions	12
1.1.110.	Specifications.....	12
1.1.111.	Subcontract	12
1.1.112.	Subcontractor	12
1.1.113.	Substantial Completion.....	12
1.1.114.	Substantial Completion Inspection	12
1.1.115.	Substantial Completion Inspection Deadline.....	12
1.1.116.	TDLR.....	12
1.1.117.	TFC Project Manager.....	12
1.1.118.	Unilateral Change Orders	12
1.1.119.	Using Agency	12
1.1.120.	Utilities.....	12

- 1.1.121. Utility Providers..... 12
- 1.1.122. Warranty Report 12
- 1.1.123. Warranty Report Deadline 13
- 1.1.124. Work 13
- 1.1.125. Work Progress Schedule 13
- II. DESCRIPTION OF PROJECT AND SCOPE OF SERVICES..... 13**
- 2.1. Description of Project..... 13
- 2.2. Scope of Services. 13
 - 2.2.1. Pre-Design Phase. 13
 - 2.2.2. Initial Conceptual Drawings/Schematic Design Phase 14
 - 2.2.3. Design Development Phase. 16
 - 2.2.4. Construction Documents Phase. 18
 - 2.2.5. Contract Bidding and Award Phase..... 22
 - 2.2.6. Construction Phase–General Administration of Construction Contract. 23
 - 2.2.7. Warranty and Guarantee Phase..... 30
 - 2.2.8. A/E Services During All Phases. 31
 - 2.2.9. TFC Approvals. 32
 - 2.2.10. Inspections. 32
- III. TERM AND TERMINATION..... 32**
- 3.1. Duration..... 32
- 3.2. Early Termination..... 32
- IV. CONSIDERATION..... 33**
- 4.1. Contract Limit–Fees and Expenses 33
 - 4.1.1. Hourly Rate..... 33
 - 4.1.2. Fixed Fee..... 33
- 4.2. Proportional Payments..... 34
- 4.3. Maximum Reimbursable Expenses. 34
- 4.4. Notice of Depletion. 35
- 4.5. Additional Services. 35
- 4.6. Payments to Subcontractors..... 35
- V. ACKNOWLEDGEMENTS, COVENANTS, AND AGREEMENTS..... 35**
- 5.1. Acknowledgements, Covenants, and Agreements of TFC..... 35
 - 5.1.1. TFC Deliverables to A/E. 35
 - 5.1.2. TFC Services to A/E..... 36
- 5.2. Acknowledgements, Covenants, and Agreements of A/E..... 36
 - 5.2.1. Timely Delivery of Conforming Services..... 36
 - 5.2.2. Modifications 36
 - 5.2.3. Limitation of Authority..... 37

- 5.2.4. Cooperation..... 37
- 5.2.5. Identification of A/E Project Manager and Subcontractors..... 37
- 5.2.6. Buy Texas..... 38
- 5.2.7. No Assumption..... 38
- 5.2.8. No Guaranty..... 38
- 5.2.9. Debts or Delinquencies Owed to the State..... 38
- 5.2.10. General and Criminal Background Checks..... 38
- 5.2.11. Equal Opportunity..... 39
- 5.2.12. No Advertising..... 39
- 5.2.13. No Warranties by TFC..... 39
- 5.2.14. No Outsourcing..... 40
- VI. WARRANTIES AND REPRESENTATIONS BY A/E..... 40**
 - 6.1. Warranties and Representations by A/E..... 40
 - 6.1.1. Compliance with All Laws..... 40
 - 6.1.2. Immigration Reform..... 40
 - 6.1.3. Proficiency in Systems..... 41
 - 6.1.4. Warranty of Services..... 41
 - 6.1.5. Warranty of Deliverables..... 42
 - 6.1.6. Eligibility..... 42
 - 6.1.7. Family Code Disclosure of Ownership..... 42
 - 6.1.8. Deceptive Trade Practices Act; Unfair Business Practices Disclosures..... 42
 - 6.1.9. Disclosure of Former State Executives..... 42
 - 6.1.10. Financial Interests/Gifts..... 43
 - 6.1.11. Prior Employment..... 43
 - 6.1.12. Affirmation as to Submittals..... 43
- VII. STATE FUNDING 43**
 - 7.1. State Funding..... 43
- VIII. COPYRIGHTS AND TRADEMARKS 44**
 - 8.1. Copyrights..... 44
 - 8.1.1. Disclaimers..... 44
 - 8.1.2. Delivery to TFC..... 44
 - 8.1.3. TFC Right to Use..... 44
 - 8.2. No Use of Name or Trademark..... 44
- IX. RECORDS, AUDIT, PROPRIETARY INFORMATION, 44**
 - 9.1. Books and Records..... 44
 - 9.2. Inspections and Audits..... 45
 - 9.3. Records Retention..... 45
 - 9.4. Confidentiality Provisions Applicable to A/E..... 45

9.4.1.	Protection of Confidential Information.....	45
9.4.2.	Definition of Confidential Information.....	45
9.4.3.	Covenants.....	47
9.4.4.	Open Records Request or Similar Requests for Information.....	48
9.5.	Confidentiality Provisions Applicable to TFC.....	49
9.6.	Public Records.....	49
X.	INSURANCE	49
10.1.	Insurance Requirements.....	49
10.1.1.	Proof of Satisfaction of Insurance Requirements	49
10.1.2.	Amounts and Types of Insurance	50
10.1.2.1.	Workers' Compensation and Employers' Liability Insurance	50
10.1.2.2.	Commercial General Liability	50
10.1.2.3.	Business Automobile Liability Insurance.....	50
10.1.2.4.	Architect/Engineers Professional Liability Insurance	51
10.2.	General Requirements for Insurance.....	51
10.2.1.	Deductibles and Self-Insured Retentions.....	51
10.2.2.	Claims-Made Policies	51
10.2.6.	Required Endorsements.....	51
10.2.4.	No Commencement of Work.....	52
10.2.5.	Qualifications of Insurer.....	53
10.2.8.	No Cancellation or Lapse.....	53
10.2.10.	Notice of Erosion.....	53
10.2.9.	Right to Review.....	53
10.2.11.	Losses Paid by A/E.....	53
10.2.12.	Failure to Obtain or Properly Maintain Insurance	53
10.2.11.	TFC a Third-Party Beneficiary	54
10.2.12.	Required Insurance Coverages No Effect On Indemnifications.....	54
10.2.13.	No Warranty That Insurance Limits Will Be Adequate to Fully Protect A/E	54
XI.	MISCELLANEOUS PROVISIONS	54
11.1.	Indemnity.....	54
11.2.	Historically Underutilized Businesses (HUBs).....	55
11.3.	Relationship of the Parties.....	55
11.4.	No Assignment and Subcontracts.....	55
11.5.	Drug Free Work Place.....	56
11.6.	Notices.....	56
11.7.	Governing Law and Venue.....	57
11.8.	Proper Authority.....	57
11.9.	Force Majeure.....	57
11.10.	Dispute Resolution.....	58
11.10.1.	Notice and Opportunity to Cure. Waiver of Claims	58

- 11.10.2. Mediation..... 58
- 11.11. Legal Construction and Severability. 59
- 11.12. Multiple Counterparts..... 59
- 11.13. Binding Effect. 59
- 11.14. Limitation on Authority and No Other Obligations. 59
- 11.15. Limitation on Adjudication Awards 59
- 11.16. No Waiver of Sovereign Immunity. 60
- 11.17. No Implied Waiver..... 60
- 11.18. No Third-Party Beneficiaries..... 60
- 11.19. Further Assurances. 60
- 11.20. No Presumptions for Ambiguities. 60
- 11.21. Time is of the Essence..... 61
- 11.22. Schedule of Exhibits..... 61
 - 11.22.1. Exhibit A. UGC 61
 - 11.22.2. Exhibit B. Supplementary General Conditions..... 61
 - 11.22.3. Exhibit C. Special Conditions..... 61
 - 11.22.4. Exhibit D. A/E Guidelines 61
 - 11.22.5. Exhibit E. Budget..... 61
 - 11.22.6. Exhibit F. Professional Services Schedule..... 61
 - 11.22.7. Exhibit G. Schedule of Rates & Fees..... 61
 - 11.22.8. Exhibit H. List of A/E Project Manager and Subcontractors..... 61
 - 11.22.9. Exhibit I. Criminal Background Check Criteria and Information 61
 - 11.22.10. Exhibit J. Proof of Satisfaction of Insurance Requirements 61
 - 11.22.11. Exhibit K. HUB Subcontracting Plan 61
 - 11.22.12. Exhibit L. HUB Subcontracting Plan PAR..... 61
- 11.23. Entire Agreement and Modification. 61

**PROFESSIONAL ARCHITECTURAL/ENGINEERING
SERVICES AGREEMENT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
[INSERT ARCHITECTURAL/ENGINEERING FIRM]**

The Texas Facilities Commission (hereinafter referred to as “TFC”), a state agency located at 1711 San Jacinto Blvd., Austin, Texas 78701, as Owner (as defined in UGC, Section 1.25) and [INSERT] (hereinafter referred to as “A/E”), located at [INSERT] enter into the following agreement for professional architectural and engineering services (hereinafter referred to as the “Agreement”) pursuant to the Professional Services Procurement Act, TEX. GOV’T CODE ANN. Ch. 2254, Subch. A (Vernon 2008 & Supp. 2012), 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.

I. DEFINITIONS

1.1. **Definitions.** 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 *2010 Uniform General Conditions* (hereinafter referred to as “UGC”), the *Supplementary General Conditions*, and the *Special Conditions*, a digital copy of each of which is incorporated herein by reference for all purposes in .pdf format on the CD-R attached hereto and labeled “[insert], EXHIBITS-TFC” (the “CD”), and named therein as “Exhibit A”, “Exhibit B”, and “Exhibit C”, respectively, in the A/E Guidelines (as defined 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 Services* 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. *A/E Guidelines* means the TFC *Architectural/Engineering Guidelines*, a digital copy of which is incorporated herein by reference for all purposes in .pdf format on the CD and named therein as “Exhibit D.”

1.1.3. *A/E Project Manager* means the individual designated by A/E, and who must be approved by TFC, as the contact person with specific authority to properly supervise and direct the duties and responsibilities of A/E, on behalf of A/E, pursuant to the terms and conditions of this Agreement, and who shall have decision-making authority to bind A/E with respect to the Professional

Services for the Project.

- 1.1.4. *Application for Final Payment* has the same meaning as defined in UGC, Section 1.2.
- 1.1.5. *Budget* means the construction budget for the Project, a digital copy of which is incorporated herein by reference for all purposes in .pdf format on the CD and named therein as “Exhibit E”, as may be amended from time to time by TFC.
- 1.1.6. *Buildings* means: [INSERT] all of which are the subject of this Agreement.
- 1.1.7. *CAD* means AutoCAD DWG format unless specifically provided otherwise herein.
- 1.1.8. *Certificate of Final Completion* has the same meaning as defined in UGC, Section 1.5.
- 1.1.9. *Certificate of Substantial Completion* means the certificate signed by the Contractor, A/E, and TFC establishing the date of Substantial Completion for the applicable part of the Work, and identifying responsibilities for security and maintenance as set out in UGC, Paragraph 12.1.1.2.
- 1.1.10. *Change Order* has the same meaning as defined in UGC, Section 1.6.
- 1.1.11. *Close-out and Record Documents Deadline* means the date that is a fixed number of days after the date of delivery of all Close-out Documents to A/E.
- 1.1.12. *Close-out Documents* has the same meaning as defined in UGC, Section 1.7 and includes the Contractor’s marked-up “as built.”
- 1.1.13. *Communication Protocol* means the communication and tracking procedures to be utilized for interaction and reporting between TFC, Contractors, Subcontractors, and A/E, including but not limited to, the use of any EPMCS utilized by TFC for the Project.
- 1.1.14. *Consideration* means the funds and any and all other forms of valid, legal consideration as discussed in Article IV of this Agreement.
- 1.1.15. *Construction Costs* means all hard and soft costs for labor, materials, fees, and other similar costs and expenses required to complete the Project, and prepared in the format promulgated by the Construction Specifications Institute.
- 1.1.16. *Construction Documents* has the same meaning as defined in UGC, Section

1.14 that in TFC's sole opinion are in satisfactory quality and detail.

- 1.1.17. *Construction Documents–65% A/E Deadline* means the date that is a fixed number of days after receipt of the Construction Documents–TFC NOA, and by which date A/E shall deliver the Construction Documents that must be sixty-five percent (65%) complete to TFC, and A/E shall prepare and deliver the Construction Documents-65% Cost Estimate to TFC.
- 1.1.18. *Construction Documents–65% A/E Reply* means such written evidence that, in TFC's sole discretion, adequately resolves all Construction Documents–65% TFC Comments.
- 1.1.19. *Construction Documents–65% A/E Reply Deadline* means the date that is a fixed number of days after the Construction Documents–65% TFC Comments Deadline, and by which date A/E shall prepare and deliver the Construction Documents–65% A/E Reply to TFC.
- 1.1.20. *Construction Documents-65% Cost Estimate* means a cost estimate using the Construction Specifications Institute MasterFormat™, with corresponding cost estimates in increasing detail and refinement updated through the Construction Documents–65% A/E Deadline.
- 1.1.21. *Construction Documents–65% Review Deadline* means the date that is a fixed number of days after the Construction Documents–65% A/E Deadline and by which date A/E shall meet with TFC to review the sixty-five percent (65%) complete Construction Documents.
- 1.1.22. *Construction Documents–65% TFC Comments* means any comments, revisions, clarifications, and the like by TFC to the sixty-five percent (65%) complete Construction Documents.
- 1.1.23. *Construction Documents–65% TFC Comments Deadline* means the date that is a fixed number of days after the Construction Documents–65% Review Deadline, and by which date TFC must prepare and deliver any Construction Documents–65% TFC Comments to A/E.
- 1.1.24. *Construction Documents–90% A/E Deadline* means the date that is a fixed number of days after the Construction Documents–65% A/E Reply Deadline, and by which date A/E shall deliver the Construction Documents to TFC that must be ninety percent (90%) complete, and A/E shall prepare and deliver a Construction Documents-90% Cost Estimate to TFC.
- 1.1.25. *Construction Documents–90% A/E Reply* means such written evidence that, in TFC's sole discretion, adequately resolves all Construction Documents–90% TFC Comments.

- 1.1.26. *Construction Documents–90% A/E Reply Deadline* means the date that is a fixed number of days after the Construction Documents–90% TFC Comments Deadline, and by which date A/E shall prepare the Construction Documents–90% A/E Reply and deliver same to TFC.
- 1.1.27. *Construction Documents-90% Cost Estimate* means a cost estimate using the Construction Specifications Institute MasterFormat™, with corresponding cost estimates in increasing detail and refinement updated through the Construction Documents–90% A/E Deadline.
- 1.1.28. *Construction Documents–90% Review Deadline* means the date that is a fixed number of days after the Construction Documents–90% A/E Deadline, and by which date A/E shall meet with TFC to review the ninety percent (90%) complete Construction Documents.
- 1.1.29. *Construction Documents–90% TFC Comments* means any comments, revisions, clarifications, and the like by TFC to the ninety percent (90%) complete Construction Documents.
- 1.1.30. *Construction Documents–90% TFC Comments Deadline* means the date that is a fixed number of days after the Construction Documents–90% Review Deadline, and by which date TFC must prepare and deliver any Construction Documents–90% TFC Comments to A/E.
- 1.1.31. *Construction Documents–100% A/E Deadline* means the date that is a fixed number of days after the Construction Documents–90% A/E Reply Deadline, and by which date A/E shall deliver the one hundred percent (100%) complete Construction Documents to TFC, and A/E shall prepare and deliver a Construction Documents-100% Cost Estimate to TFC.
- 1.1.32. *Construction Documents–100% A/E Reply* means three (3) originals and one (1) digital copy of the approved, one hundred percent (100%) complete, professionally signed and sealed Construction Documents.
- 1.1.33. *Construction Documents–100% A/E Reply Deadline* means the date that is a fixed number of days after the Construction Documents–100% TFC Comments Deadline, and by which date A/E shall prepare and deliver the Construction Documents–100% A/E Reply to TFC.
- 1.1.34. *Construction Documents-100% Cost Estimate* means a cost estimate using the Construction Specifications Institute MasterFormat™, with corresponding cost estimates in increasing detail and refinement updated through the Construction Documents–100% A/E Deadline.

- 1.1.35. *Construction Documents–100% Review Deadline* means the date that is a fixed number of days after the Construction Documents–100% A/E Deadline, and by which date A/E shall meet with TFC to review the one hundred percent (100%) complete Construction Documents.
- 1.1.36. *Construction Documents–100% TFC Comments* means any comments, revisions, clarifications, and the like by TFC to the one hundred percent (100%) complete Construction Documents.
- 1.1.37. *Construction Documents–100% TFC Comments Deadline* means the date that is a fixed number of days after the Construction Documents–100% Review Deadline, and by which date TFC must prepare and deliver any Construction Documents–100% TFC Comments to A/E.
- 1.1.38. *Construction Documents–TFC NOA* means a written notice of authorization to proceed with preparation of the Construction Documents.
- 1.1.39. *Construction Documents–TFC NOA Deadline* means the date that is a fixed number of days after the *DD Documents–A/E Reply Deadline*, and by which date TFC should deliver a Construction Documents–TFC NOA to A/E.
- 1.1.40. *Contract Documents* has the same meaning as defined in UGC, Section 1.10.
- 1.1.41. *Contractor* has the same meaning as defined in UGC, Section 1.13.
- 1.1.42. *DD Documents* means the design development documents, i.e., such plans, elevations, and such other drawings, calculations, and outline specifications that, in TFC’s sole opinion, are of such quality and detail that enable TFC to fix and illustrate the size and character of the entire Project in its essentials as to kinds of materials and assembly details and type of structure and to coordinate the interface of all architectural and structural elements with all building systems.
- 1.1.43. *DD Documents–A/E Deadline* means the date that is a fixed number of days after receipt of the DD Documents–TFC NOA, and by which date A/E shall deliver the design development phase services for the Project to TFC, and A/E shall prepare and deliver its DD Phase Costs Estimate to TFC.
- 1.1.44. *DD Documents–A/E Reply* means such written evidence that, in TFC’s sole discretion, adequately resolves all DD Documents–TFC Comments.
- 1.1.45. *DD Documents–A/E Reply Deadline* means the date that is a fixed number of days after the DD Documents–TFC Comments Deadline, and by which date A/E shall deliver the DD Documents–A/E Reply to TFC.

- 1.1.46. *DD Documents–Review Deadline* means the date that is a fixed number of days after the DD Documents–A/E Deadline, and by which date A/E shall meet with TFC to review the proposed DD Documents.
- 1.1.47. *DD Documents–TFC Comments* means any comments, revisions, clarifications, and the like from TFC to the proposed DD Documents.
- 1.1.48. *DD Documents–TFC Comments Deadline* means the date that is a fixed number of days after the DD Documents–Review Deadline, and by which date TFC shall prepare and deliver any DD Documents–TFC Comments to A/E.
- 1.1.49. *DD Documents–TFC NOA* means a written notice of authorization to proceed with preparation of the DD Documents.
- 1.1.50. *DD Documents–TFC NOA Deadline* means the date that is a fixed number of days after the Schematic Design–A/E Reply Deadline, and by which date TFC should deliver a DD Documents–TFC NOA to A/E.
- 1.1.51. *DD Phase Cost Estimate* means the detailed estimate of the probable Construction Costs in ASTM UNIFORMAT II, updated through the DD Documents–A/E Deadline.
- 1.1.52. *Deliverables* means any and all Drawings, Specifications, photos, designs, studies, sketches, computer programs, reports, and other Professional Services, which are specified to be delivered by A/E pursuant to the terms of this Agreement.
- 1.1.53. *Design Program* means, collectively, the overall goals and design objectives of the Project, the aesthetic considerations, the functional requirements including: (i) allocations of space with uses and adjacency relationships for all areas/spaces; and (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 Project.
- 1.1.54. *Drawings* has the same meaning as defined in UGC, Section 1.19.
- 1.1.55. *Effective Date* means the date that the last signature of a party is affixed hereto.
- 1.1.56. *EPMCS* means electronic project management control system.
- 1.1.57. *Final Completion* has the same meaning as defined in UGC, Section 1.20.
- 1.1.58. *Final Inspection* means the same process and procedure described in UGC, Subsection 12.1.2.

- 1.1.59. *Final Inspection Deadline* means the date that is thirty (30) days after the Substantial Completion Inspection, and by which date A/E must conduct a Final Inspection.
- 1.1.60. *Final Payment* has the same meaning as defined in UGC, Section 1.21.
- 1.1.61. *Governmental Authorities* means all federal, state, and local governmental entities having jurisdiction over the Project, and the A/E.
- 1.1.62. *Initial Conceptual Drawings* means initial concept drawings and block diagrams that, in TFC's sole opinion, are of such quality and detail to enable TFC to establish design direction.
- 1.1.63. *Initial Conceptual Drawings–A/E Deadline* means the date that is a fixed number of days after the Pre-Design Deadline, and by which date A/E shall prepare and submit the Initial Conceptual Drawings to TFC.
- 1.1.64. *Initial Conceptual Drawings–A/E Reply* means such written evidence that, in TFC's sole discretion, adequately resolves all Initial Conceptual Design–TFC Comments.
- 1.1.65. *Initial Conceptual Drawings–A/E Reply Deadline* means the date that is a fixed number of days after the Initial Conceptual Drawings–TFC Comments Deadline, and by which date A/E shall prepare and deliver the Initial Conceptual Drawings–A/E Reply to TFC.
- 1.1.66. *Initial Conceptual Drawings–Review Deadline* means the date that is a fixed number of days after the Initial Conceptual Drawings–A/E Deadline, and by which date A/E shall meet with TFC to review the Initial Conceptual Drawings.
- 1.1.67. *Initial Conceptual Drawings–TFC Comments* means any comments, revisions, clarifications, and the like from TFC to the proposed Initial Conceptual Drawings.
- 1.1.68. *Initial Conceptual Drawings–TFC Comments Deadline* means the date that is a fixed number of days after the Initial Conceptual Drawings–Review Deadline, and by which date TFC must prepare and deliver any Initial Conceptual Drawings–TFC Comments to A/E.
- 1.1.69. *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 Texas Government Code, Chapter 469.

- 1.1.70. *MEP Systems* means mechanical, electrical, and plumbing systems.
- 1.1.71. *Notice of Authorization* (or “NOA”) means the written authorization to proceed to the next phase of development of Construction Documents. Notice of Authorization is to be distinguished from a Notice to Proceed.
- 1.1.72. *Notice of Termination* means the ten (10) day advance written notice of termination that may be delivered pursuant to the terms of this Agreement.
- 1.1.73. *Notice to Proceed* (or “NTP”) means the written authorization to proceed with commencement of Professional Services that may be delivered to A/E by TFC.
- 1.1.74. *Order-of-Magnitude Opinion of Probable Construction Cost* means a level one (1) cost estimate to facilitate budgetary and feasibility determinations, based on historical information with adjustments made for specific project conditions, wherein estimates are based on costs per square foot, number of rooms/seats, and the like. Project information required for estimates at this level include a general functional description, schematic layout, geographic location, size expressed as building area, numbers of people, seats, and the like, and intended use.
- 1.1.75. *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 1.28.
- 1.1.76. *Pay Application* means the application for payment submitted by A/E as discussed in Article IV below.
- 1.1.77. *Periodic Reports* means the written reports required to be submitted to TFC by A/E, which reports shall be compiled and submitted in such form as prescribed by TFC.
- 1.1.78. *Person* means an individual, firm, partnership, corporation, association and any other legally recognized entity.
- 1.1.79. *Post-Final Inspection Punchlist* means the punchlist of items that A/E will deliver to Contractor that sets out any part of the Work that was not corrected or completed in accordance with the Contract Documents as of the Final Inspection.
- 1.1.80. *Post-Final Inspection Punchlist Deadline* means the date that is a fixed

number of days after the date by which A/E shall deliver any Post-Final Inspection Punchlist to Contractor.

- 1.1.81. *Pre-Design Deadline* means the date that is a fixed number of days after delivery of a Notice to Proceed, and by which date A/E shall (i) complete all the Pre-Design Tasks, and (ii) prepare and deliver the Pre-Design Task Reports to TFC.
- 1.1.82. *Pre-Design Task Report* means a comprehensive report(s) that sets forth the results of, and answers to, each of the Pre-Design Tasks discussed in Article II.
- 1.1.83. *Pre-Design Tasks* means the mobilization and pre-design services to be provided to TFC as discussed in Article II.
- 1.1.84. *Pre-Final Inspection Punchlist* means the list of any unresolved punchlist items that A/E will deliver to Contractor when a Certificate of Substantial Completion is delivered by TFC as discussed in UGC, Paragraph 12.1.1.2.
- 1.1.85. *Pre-Final Inspection Punchlist Deadline* means the date that is a fixed number of days after the completion of the Substantial Completion Inspection, and by which date A/E shall prepare and deliver a proposed Post-Substantial Completion Inspection Punchlist to TFC.
- 1.1.86. *Professional Services* means (i) professional architectural services; and/or (ii) professional engineering services as defined in Texas Government Code, Chapter 2254, Subchapter A, the scope of both of which is set out in Section 2.2 below.
- 1.1.87. *Professional Services Schedule* (hereinafter sometimes referred to as the “Schedule”) means the schedule/timeline set out on the CD and named therein as “Exhibit F”, 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 a Notice to Proceed.
 - 1.1.87.1. The Parties acknowledge that upon execution of this Agreement, the Schedule will not reflect the date of issuance of the NTP, nor whether the Project 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.

- 1.1.87.2. 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 added to the CD.
- 1.1.88. *Project* means as stated in Section 2.1 below, and includes each component design/construction package that may be prescribed by TFC.
- 1.1.89. *Project Analysis* has the same meaning as defined in Texas Government Code, Section 2166.001(5).
- 1.1.90. *Proposed Change Orders* has the same meaning as defined in UGC, Section 1.29.
- 1.1.91. *Record Documents* has the same meaning as defined in UGC, Section 1.31.
- 1.1.92. *Reimbursable Expenses* means those reasonable and necessary out-of-pocket costs and expenses incurred by A/E for the provision of the Professional Services that are approved by TFC.
- 1.1.93. *RFI* means a request for information as defined in UGC, Section 1.32.
- 1.1.94. *RFI Response* means a written clarification, instruction, and/or interpretation, including, but not necessarily limited to, an architect's supplemental instructions issued in response to an RFI, which response must be consistent with the intent of the Construction Documents.
- 1.1.95. *RFI Response Deadline* means the date that is seven (7) days after receipt, or uploading, of an RFI, and by which date A/E must deliver an RFI Response to Contractor.
- 1.1.96. *Schematic Design–A/E Deadline* means the date that is a fixed number of days after receipt of a Schematic Design–TFC NOA, and by which date A/E shall prepare and deliver the proposed Schematic Design Package and its Schematic Design Phase Cost Estimate to TFC.
- 1.1.97. *Schematic Design–A/E Reply* means such written evidence that, in TFC's sole discretion, adequately resolves all Schematic Design–TFC Comments.
- 1.1.98. *Schematic Design–A/E Reply Deadline* means the date that is a fixed number of days after the Schematic Design–TFC Comments Deadline, and by which date A/E shall prepare and deliver the Schematic Design–A/E Reply to TFC.
- 1.1.99. *Schematic Design Drawings* means, at a minimum, a Site development plan,

building plans, elevations, sections, and perspective sketches sufficient to convey comprehensive design intent.

- 1.1.100. *Schematic Design Package* means the combination of (i) Schematic Design Drawings; (ii) an outline summary of the areas within the proposed Project, such summary corresponding to the general categories in the space allocation outlined in the Design Program; (iii) a description of the building and general Site development that shall include an overview of proposed exterior architectural materials and structural systems together with the MEP Systems and services being contemplated; and (iv) an Order-of-Magnitude Opinion of Probable Construction Cost that demonstrates conformity with the Budget, all that in TFC's sole opinion must be in satisfactory quality and detail.
- 1.1.101. *Schematic Design Phase Cost Estimate* means an Order-of-Magnitude Opinion of Probable Construction Cost updated through the Schematic Design–A/E Deadline.
- 1.1.102. *Schematic Design–Review Deadline* means the date that is a fixed number of days after the Schematic Design–A/E Deadline, and by which date A/E shall meet with TFC to review the proposed Schematic Design Package.
- 1.1.103. *Schematic Design–TFC Comments* means any comments, revisions, clarifications, and the like from TFC to the proposed Schematic Design Package.
- 1.1.104. *Schematic Design–TFC Comments Deadline* means the date that is a fixed number of days after the Schematic Design–Review Deadline, and by which date TFC shall prepare and deliver any Schematic Design–TFC Comments to A/E.
- 1.1.105. *Schematic Design–TFC NOA* means a written notice of authorization to proceed with preparation of the Schematic Design Package.
- 1.1.106. *Schematic Design–TFC NOA Deadline* means the date that is a fixed number of days after the Initial Conceptual Drawings–A/E Reply Deadline, and by which date TFC should deliver a Schematic Design–TFC NOA to A/E.
- 1.1.107. *Scope of Services* means the Professional Services as set out in Section 2.2 below.
- 1.1.108. *Site* means the lands, areas, and/or buildings indicated in the Contract Documents as being furnished by TFC 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.

- 1.1.109. *Special Conditions* has the same meaning as defined in UGC, Section 1.37.
- 1.1.110. *Specifications* has the same meaning as defined in UGC, Section 1.38.
- 1.1.111. *Subcontract* means any agreements between A/E and a Subcontractor.
- 1.1.112. *Subcontractor* means any Person that enters into an agreement with A/E to perform any part of the Professional Services.
- 1.1.113. *Substantial Completion* has the same meaning as defined in UGC, Section 1.41.
- 1.1.114. *Substantial Completion Inspection* means the process and procedure described in UGC, Subsection 12.1.1.
- 1.1.115. *Substantial Completion Inspection Deadline* means the date that is a fixed number of days after proper written notification is delivered to TFC and A/E by Contractor that Contractor has fully satisfied the requirements set out in UGC, Paragraph 12.1.1.1, and by which date A/E must conduct a Substantial Completion Inspection.
- 1.1.116. *TDLR* means the Texas Department of Licensing and Regulations.
- 1.1.117. *TFC Project Manager* means the individual designated by TFC as the owner's designated representative with the direct responsibility to properly supervise the design and construction of the Project, and the services being provided pursuant to this Agreement on behalf of TFC, including, but not limited to, (i) serving as the point of contact between TFC, the Using Agency (if any), and A/E; and (ii) supervising TFC's review and approval of the Professional Services.
- 1.1.118. *Unilateral Change Order* has the same meaning as defined in UGC, Section 1.44.
- 1.1.119. *Using Agency* has the same meaning as defined in Texas Government Code, Section 2166.001(10).
- 1.1.120. *Utilities* means water, sewer, gas, electric, telecom, cable, and like services.
- 1.1.121. *Utility Providers* means any and all entities that TFC desires to provide Utilities to the Project.
- 1.1.122. *Warranty Report* means the comprehensive report of the findings of A/E pursuant to the inspections, and which must include, but not be necessarily

limited to, a list of the items needing replacement, correction, or repair.

- 1.1.123. *Warranty Report Deadline* means the date that is three hundred thirty-five (335) days after the date that a Certificate of Substantial Completion has been issued as to the Work, or a discrete portion thereof, and by which date A/E shall deliver the warranty and guarantee phase services.
- 1.1.124. *Work* means the administration, procurement, materials, equipment, testing, and all services necessary for A/E, and/or its agents, to fulfill A/E's obligations under this Agreement.
- 1.1.125. *Work Progress Schedule* has the same meaning as defined in UGC, Section 1.46.

II. DESCRIPTION OF PROJECT AND SCOPE OF SERVICES

- 2.1. Description of Project. The project for which A/E agrees to provide Professional Services is generally described as [INSERT] (hereinafter referred to as the "Project").
- 2.2. Scope of Services. A/E agrees to timely deliver the Professional Services described below pursuant to the Professional Services Schedule.
 - 2.2.1. Pre-Design Phase. No later than the Pre-Design Deadline, A/E shall timely deliver the following Pre-Design Tasks to TFC:
 - 2.2.1.1. Consult with staff of TFC, 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, and (ii) the Design Program.
 - 2.2.1.2. Inspect and timely become thoroughly familiar with the Site for the Project.
 - 2.2.1.3. Review and become thoroughly familiar with any and all relevant and existing Project, Site, and facilities studies.
 - 2.2.1.4. Review and become thoroughly familiar with the Budget proposed by TFC and advise TFC if, in the opinion of A/E, the Budget is adequate in terms of categories and values so as to allow for the design and timely construction of the Project as contemplated. If, in the opinion of A/E, the Budget is adequate, A/E shall confirm in writing its ability to prepare the DD Documents that will comply with the Design Program parameters and the Budget. If, however, in the opinion of A/E, the Budget proposed by TFC is inadequate

or insufficient, the parties shall diligently pursue making appropriate adjustments as would be necessary to enable A/E to confirm the adequacy of the Budget. If such efforts should fail, TFC, at its option, may (i) waive the provisions of this subsection; or (ii) terminate this Agreement. The parties acknowledge and agree that subsequent changes in Design Program or scope of the Project may be cause to modify and/or amend the Budget. Any such modification or amendment to the Budget must be authorized by TFC in writing.

- 2.2.1.5. Identify all codes, rules, regulations and all other Site-related requirements, including, but not limited to, environmental and/or traffic impact studies that may affect the timely design and construction of the Project.
 - 2.2.1.6. Interface with all Utility Providers as is reasonably necessary in order to determine the necessary specifications for connecting all Utilities to the Project.
 - 2.2.1.7. Receive and become familiar with requirements of the technical and design standards of TFC and the Using Agency, including, but not limited to, the A/E Guidelines.
 - 2.2.1.8. Determine and identify to TFC which additional Subcontractor(s), if any, that are not engaged, or to be engaged, by A/E pursuant to this Agreement, will be necessary to complement the Professional Services in order to fulfill requirements of this Agreement.
 - 2.2.1.9. Coordinate the manner of implementing the CAD system and the EPMCS that will be utilized by TFC throughout the design and construction of the Project.
 - 2.2.1.10. If requested, assign appropriate A/E staff to receive instruction regarding the use of the EPMCS to be utilized by TFC.
 - 2.2.1.11. Deliver a Pre-Design Task Report to TFC. Upon consent of TFC, A/E may deliver one (1) amendment to the Pre-Design Task Report no later than the Pre-Design Deadline.
- 2.2.2. Initial Conceptual Drawings/Schematic Design Phase A/E shall deliver the following initial conceptual drawings/schematic design services to TFC:
- 2.2.2.1. A/E Delivers Initial Conceptual Drawings. No later than the Initial Conceptual Drawings–A/E Deadline, prepare and deliver the Initial Conceptual Drawings to TFC for review and approval. It is

acknowledged and agreed that A/E shall continue to develop the drawings at the risk of being required to make changes until a Schematic Design–TFC NOA is delivered by TFC.

- 2.2.2.2. Meet to Review the Initial Conceptual Drawings. No later than the Initial Conceptual Drawings–Review Deadline, A/E shall meet with TFC to review the Initial Conceptual Drawings.
- 2.2.2.3. TFC’s Formal Comments. No later than the Initial Conceptual Drawings–TFC Comments Deadline, TFC shall prepare and deliver any Initial Conceptual Drawings–TFC Comments to A/E.
- 2.2.2.4. A/E’s Formal Reply. No later than the Initial Conceptual Drawings–A/E Reply Deadline, A/E shall deliver the Initial Conceptual Drawings–A/E Reply to TFC for review and approval.
- 2.2.2.5. TFC’s Formal Authorization to Proceed With Schematic Design Package. No later than the Schematic Design–TFC NOA Deadline, TFC should deliver a Schematic Design–TFC NOA to A/E if TFC determines, in its sole discretion, that the Initial Conceptual Drawings–A/E Reply adequately resolves all Initial Conceptual Drawings–TFC Comments.
- 2.2.2.6. A/E Delivers Proposed Schematic Design Package and Initial Cost Estimate. No later than the Schematic Design–A/E Deadline, A/E shall prepare and deliver to TFC:
 - 2.2.2.6.1. the proposed Schematic Design Package for review and approval; and
 - 2.2.2.6.2. the Schematic Design Phase Cost Estimate to TFC. If such updated cost estimate exceeds the Budget by more than twenty percent (20%), A/E shall consult with TFC to identify potential design and/or Specification modifications that could result in the cost estimate being in compliance with the Budget. Approved modifications shall be incorporated into the DD Documents at no cost to TFC.
 - 2.2.2.6.3. It is acknowledged and agreed that A/E may continue to develop the drawings at the risk of being required to make changes until a DD Documents–TFC NOA is delivered by TFC.
- 2.2.2.7. Meet to Review Schematic Design Package. No later than the

Schematic Design–Review Deadline, A/E shall meet with TFC to review the proposed Schematic Design Package.

- 2.2.2.8. TFC’s Formal Comments. No later than the Schematic Design–TFC Comments Deadline, TFC shall prepare and deliver any Schematic Design–TFC Comments to A/E.
 - 2.2.2.9. A/E’s Formal Reply. No later than the Schematic Design–A/E Reply Deadline, A/E shall prepare and deliver the Schematic Design–A/E Reply to TFC for review and approval.
 - 2.2.2.10. TFC’s Formal Authorization to Proceed With DD Documents. No later than the DD Documents–TFC NOA Deadline, TFC should deliver a DD Documents–TFC NOA to A/E if TFC determines, in its sole discretion, that the Schematic Design–A/E Reply adequately resolves all Schematic Design–TFC Comments.
- 2.2.3. Design Development Phase. No later than the DD Documents–A/E Deadline, A/E shall deliver the following design development phase services to TFC:
- 2.2.3.1. A/E Delivers Proposed DD Documents and Updated Cost Estimate. Based upon the approved Schematic Design Package, A/E shall prepare and deliver to TFC:
 - 2.2.3.1.1. the proposed DD Documents for review and approval; and
 - 2.2.3.1.2. the DD Phase Cost Estimate. If such updated cost estimate exceeds the Budget by more than fifteen percent (15%), A/E shall consult with TFC to identify potential design and/or Specification modifications that could result in the cost estimate being in compliance with the Budget. Approved modifications shall be incorporated into the DD Documents at no cost to TFC.
 - 2.2.3.1.3. It is acknowledged and agreed that A/E may continue to develop the drawings at the risk of being required to make changes until a Construction Documents–TFC NOA is delivered by TFC.
 - 2.2.3.1.4. All DD Documents must comply with all Laws and Regulations of all Governmental Authorities.

- 2.2.3.1.5. Said DD Documents shall be based upon reliable and accurate calculations that appropriately determine all architectural and engineering components of the Project, and shall include, but not necessarily be limited to, the following:
- 2.2.3.1.5.1. design criteria for all proposed clearing and grubbing, on-site and off-site drainage and erosion control, and for any other grade and subgrade Site preparation and erosion control required by any Governmental Authorities;
 - 2.2.3.1.5.2. design criteria for connection to all proposed temporary and permanent on-site and off-site Utilities;
 - 2.2.3.1.5.3. design criteria for the proposed structural system, including the rationale for all determinations, all design loads for floor, roof, and lateral loads;
 - 2.2.3.1.5.4. design criteria for the proposed heating, ventilation and air conditioning (hereinafter referred to as “HVAC”) system and single line layout of conveyance systems;
 - 2.2.3.1.5.5. design criteria for the proposed electrical system including reserve capacity;
 - 2.2.3.1.5.6. an evaluation of energy conservation alternatives, and the filing of the Energy Conservation Design Standard Compliance Statement with the State Energy Conservation Office and the Texas Comptroller of Public Accounts; and
 - 2.2.3.1.5.7. copies of all manufacturers’ documentation that illustrates the

proposed materials, equipment and warranties to be specified for the Project.

- 2.2.3.1.6. Submit all documents required by TDLR, as TFC's authorized agent.
- 2.2.3.2. Meet to Review DD Documents. No later than the DD Documents–Review Deadline, A/E shall meet with TFC to review the proposed DD Documents.
- 2.2.3.3. TFC's Formal Comments. No later than the DD Documents–TFC Comments Deadline, TFC shall deliver any DD Documents–TFC Comments to A/E.
- 2.2.3.4. A/E's Formal Reply. No later than the DD Documents–A/E Reply Deadline, A/E shall prepare and deliver the DD Documents–A/E Reply to TFC for review and approval.
- 2.2.3.5. TFC's Formal Authorization to Proceed With Construction Documents. No later than the Construction Documents–TFC NOA Deadline, TFC should deliver a Construction Documents–TFC NOA to A/E if TFC determines, in its sole discretion, that the DD Documents–A/E Reply adequately resolves all DD Documents–TFC Comments.
- 2.2.4. Construction Documents Phase. A/E shall deliver the following Construction Documents phase services to TFC:
 - 2.2.4.1. A/E Delivers Proposed 65% Complete Construction Documents and Updated Cost Estimate. No later than the Construction Documents–65% A/E Deadline, A/E shall deliver to TFC:
 - 2.2.4.1.1. the sixty-five percent (65%) complete Construction Documents; and
 - 2.2.4.1.2. the Construction Documents-65% Cost Estimate. If such updated cost estimate exceeds the Budget by more than ten percent (10%), A/E shall consult with TFC to identify further potential design and/or Specification modifications that could result in the cost estimate being in compliance with the Budget. Approved modifications shall be incorporated into the Construction Documents at no cost to TFC

- 2.2.4.2. Meet to Review the 65% Complete Construction Documents. No later than the Construction Documents–65% Review Deadline, A/E shall meet with TFC to review the sixty-five percent (65%) complete Construction Documents.
- 2.2.4.3. TFC’s Formal Comments. No later than the Construction Documents–65% TFC Comments Deadline, TFC shall deliver any Construction Documents–65% TFC Comments to A/E.
- 2.2.4.4. A/E’s Formal Reply. No later than the Construction Documents–65% A/E Reply Deadline, A/E shall deliver the Construction Documents–65% A/E Reply to TFC for review and approval.
- 2.2.4.5. A/E Delivers Proposed 90% Complete Construction Documents and Updated Cost Estimate. No later than the Construction Documents–90% A/E Deadline, and based on the approved sixty-five percent (65%) complete Construction Documents, A/E shall prepare and deliver to TFC:
- 2.2.4.5.1. the ninety percent (90%) complete Construction Documents; and
- 2.2.4.5.2. the Construction Documents-90% Cost Estimate If such updated cost estimate exceeds the Budget by more than five percent (5%), A/E shall consult with TFC to identify further potential design and/or Specification modifications that could result in the updated cost estimate being in compliance with the Budget. Approved modifications shall be incorporated into the Construction Documents at no cost to TFC.
- 2.2.4.6. Meet to Review the 90% Complete Construction Documents. No later than the Construction Documents–90% Review Deadline, A/E shall meet with TFC to review the ninety percent (90%) complete Construction Documents.
- 2.2.4.7. TFC’s Formal Comments. No later than the Construction Documents–90% TFC Comments Deadline, TFC shall deliver any Construction Documents–90% TFC Comments to A/E.
- 2.2.4.8. A/E’s Formal Reply. No later than the Construction Documents–90% A/E Reply Deadline, A/E shall:

- 2.2.4.8.1. deliver the Construction Documents–90% A/E Reply to TFC; and
 - 2.2.4.8.2. submit all documents required by TDLR, as TFC’s authorized agent, and obtain TDLR’s determination of whether the Project is designed in compliance with applicable requirements of TDLR. A/E shall immediately deliver a copy of any determination of compliance or noncompliance by TDLR to TFC.
- 2.2.4.9. A/E Delivers Proposed 100% Complete Construction Documents and Updated Cost Estimate. No later than the Construction Documents–100% A/E Deadline, and based on the approved ninety percent (90%) complete Construction Documents, A/E shall prepare and deliver to TFC:
- 2.2.4.9.1. the proposed one hundred percent (100%) complete Construction Documents; and
 - 2.2.4.9.2. the Construction Documents-100% Cost Estimate. If such estimate exceeds the Budget, A/E shall consult with TFC to identify further potential design and/or Specification modifications that could result in the estimate being in compliance with the Budget. Approved modifications shall be incorporated into the Construction Documents at no cost to TFC in the event TFC determines in its sole discretion that such changes are the responsibility of A/E.
- 2.2.4.10. Meet to Review the 100% Complete Construction Documents. No later than the Construction Documents–100% Review Deadline, A/E shall meet with TFC to review the one hundred percent (100%) complete Construction Documents.
- 2.2.4.11. TFC’s Formal Comments. No later than the Construction Documents–100% TFC Comments Deadline, TFC shall deliver any Construction Documents–100% TFC Comments to A/E.
- 2.2.4.12. A/E’s Formal Reply. No later than the Construction Documents–100% A/E Reply Deadline, A/E shall deliver the Construction Documents–100% A/E Reply to TFC.
- 2.2.4.13. Format of Deliverables. Each of the foregoing deliverables shall be

submitted via disk and shall be appropriately labeled to include identification of the software program (and version thereof) utilized.

- 2.2.4.13.1. All Drawings shall be organized within the layering system in accordance with the A/E Guidelines.
 - 2.2.4.13.2. Layer format and names shall be in accordance with the A/E Guidelines.
 - 2.2.4.13.3. 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.
- 2.2.4.14. Possible Phasing. Upon written request by TFC, A/E shall prepare the Construction Documents so as to enable the various phases of the Work to be awarded pursuant to separate contracts, the preparation of which shall constitute an Additional Service.
- 2.2.4.15. Signed & Sealed. All Drawings and Specifications shall be appropriately signed, sealed, and dated by the responsible architect(s) and engineer(s).
- 2.2.4.16. Compliance with Laws and Regulations. The Construction Documents must comply with all Laws and Regulations.
- 2.2.4.16.1. All Drawings and Specifications must, in conspicuous text, expressly prohibit any electrical systems or equipment from being energized or otherwise activated without a minimum of twenty-four (24) hour advance notice to TFC.
 - 2.2.4.16.2. A/E shall submit all documents required to secure approval of all Governmental Authorities. All requests for reimbursement for any direct costs associated with submitting documents to such authorities and for permit fees shall be governed by Article IV of this Agreement.
- 2.2.4.17. No Unauthorized Release. No Construction Documents shall be issued, delivered, or released for any purpose without the prior written consent of TFC.

- 2.2.5. Contract Bidding and Award Phase. Upon receipt of an applicable written authorization to proceed, and only in such event, A/E shall prepare and deliver to TFC the following contract bidding and award phase services for the Project:
- 2.2.5.1. Delivery of Documents. Unless otherwise instructed by TFC, deliver three (3) sets of the approved Construction Documents to TFC, any additional copies of which shall be considered a Reimbursable Expense.
- 2.2.5.2. Assist During Bidding and Award Phase. Assist TFC in the bidding and award phase by delivering the following services:
- 2.2.5.2.1. inform qualified bidders of the solicitation;
- 2.2.5.2.2. distribute Construction Documents to qualified bidders and to plan rooms specified by TFC;
- 2.2.5.2.3. submit the appropriate approved Drawings and Specifications to on-line electronic plan rooms as may be specified by TFC, the submission cost of which constitutes a Reimbursable Expense;
- 2.2.5.2.4. attend all pre-bid meeting(s) conducted by TFC;
- 2.2.5.2.5. consult with and advise TFC as to any bidder inquiries;
- 2.2.5.2.6. critically review all submittals; and
- 2.2.5.2.7. prepare any addenda, amendments, and the like, to the solicitation documents which may become necessary.
- 2.2.5.3. Scoring Process. Attend and participate in the evaluation and scoring of all proposals in accordance with TFC processes and procedures, including, but not necessarily limited to, interviewing of bidders, which participation shall not constitute an Additional Service.
- 2.2.5.4. Budget Restrictions. If the lowest acceptable bid price, as determined by TFC in its absolute and sole discretion, exceeds the Budget and TFC does not amend the Budget, A/E shall consult

with TFC in order to identify further potential design and/or Specification modifications which could result in obtaining a bid price that would be in compliance with the Budget. Approved modifications shall be incorporated into the Construction Documents and appropriate copies reissued at no cost to TFC.

2.2.5.5. Amending Budget. In the event TFC elects to amend the Budget and allocate such additional funds as necessary to accommodate the lowest acceptable bid and the Project proceeds, there shall be no increase in the amount of the Consideration.

2.2.5.6. Inquiries Forwarded to TFC. In the event A/E receives any inquiries whatsoever from bidders or potential bidders regarding the Project, A/E must refer such inquiries to TFC, Procurement Division (512) 463-0209. **A/E is not authorized to provide any comments, answers or other similar responses to such inquiries.** All inquiries must be forwarded to TFC for response.

2.2.6. Construction Phase–General Administration of Construction Contract. A/E shall deliver the following management and administration of construction contract(s) services to TFC during the construction phase of the Project as is specified in the UGC and as follows:

2.2.6.1. Observation and Review. Perform professional observation and review of the Work in order to determine that all elements and components of the Project are being timely constructed and installed in substantial compliance with the Construction Documents. Such observation and review shall include, at a minimum:

2.2.6.1.1. providing periodic on-site observations of all Work, completed and in progress, and, at least [Enter Frequency, e.g., weekly or biweekly] during all phases of Work;

2.2.6.1.2. such observations shall include, but shall not be limited to, all functions applicable to professional inspections that are described in Texas Government Code, Sections 2166.351(3) and 2166.355;

2.2.6.1.3. if requested by TFC, designate and provide a full-time A/E on-site representative, the provision of which shall constitute an Additional Service;

- 2.2.6.1.4. no later than the RFI Response Deadline, prepare and deliver an RFI Response for each RFI to Contractor with a copy to TFC. If the subject of the RFI cannot be reasonably answered by this deadline, A/E shall so advise TFC and propose an alternative deadline and the basis for such proposal, the acceptance of which shall be in the sole discretion of TFC. A/E shall make reasonable efforts to answer Contractor's questions and RFIs in the shortest timeframe possible in order to collaborate in the prosecution of the Contractor's Work (as defined in UGC, §1.45) on a schedule that recognizes that "**TIME IS OF THE ESSENCE**";
- 2.2.6.1.5. conduct timely contract management and administration activities as required herein by utilization of the EPMCS;
- 2.2.6.1.6. timely review and deliver to TFC and Contractor complete responses within the specified deadlines to the submittals described below. If the deadline cannot be met, A/E shall so advise TFC and Contractor, and propose an alternative deadline and the basis for such proposal, the acceptance of which shall be within the sole discretion of TFC. A/E shall make reasonable efforts to review submittals in the shortest timeframe possible to collaborate in the prosecution of Contractor's Work on a schedule that recognizes that "**TIME IS OF THE ESSENCE**";
 - 2.2.6.1.6.1. submittals: within ten (10) days after receipt;
 - 2.2.6.1.6.2. Applications for Payment: within five (5) days after receipt;
 - 2.2.6.1.6.3. Proposed Change Orders and Unilateral Change Orders: within five (5) days after receipt;
 - 2.2.6.1.6.4. each and every certification for payment issued by A/E shall constitute an express representation that based upon (i) A/E's on-site observation(s) and an evaluation of the Contractor's

Pay Application; and (ii) A/E's knowledge and belief:

2.2.6.1.6.4.1. the construction has progressed to the point indicated in the Application for Payment, and in general conformity with the Contract Documents; and

2.2.6.1.6.4.2. A/E has received and approved all testing reports required by the Contract Documents up to the respective Pay Application.

2.2.6.2. Preparation Of Revisions. Prepare such amended or revised Drawings and/or Specifications as would be necessary to fully and accurately reflect any approved changes.

2.2.6.2.1. Deliver said amended or revised Drawings and/or Specifications to the Contractor and request a price proposal.

2.2.6.2.2. Thereafter, A/E shall review the Contractor's proposal and recommend approval or disapproval to TFC.

2.2.6.3. Update Construction Documents. Timely update all Construction Documents as may be necessary to accurately reflect conditions resulting from approved Change Orders so as to be enabled to timely deliver complete and accurate Record Documents.

2.2.6.4. Deliver Periodic Report. Deliver a Periodic Report to TFC for each observation and review of the Work. Such Periodic Reports must describe in reasonable detail the current status of the following:

2.2.6.4.1. the completed Work in relation to the Work Progress Schedule;

2.2.6.4.2. projected completion dates;

- 2.2.6.4.3. percentage of completion of each discrete subpart of the Work;
 - 2.2.6.4.4. any existing or potential deficiencies and/or discrepancies;
 - 2.2.6.4.5. the status of any revisions or Change Orders; and
 - 2.2.6.4.6. the status of the Record Documents.
- 2.2.6.5. Substantial Completion Inspection. Subject to the provisions of UGC, Subsection 12.1.1, no later than the Substantial Completion Inspection Deadline, A/E shall conduct a Substantial Completion Inspection of the Work, while accompanied by the TFC Project Manager, to determine whether said portion of the Work has achieved Substantial Completion.
- 2.2.6.5.1. In the event TFC and A/E conclude that the Work, or any portion thereof, has not been performed or completed in accordance with the Construction Documents, A/E shall prepare and deliver, no later than the Pre-Final Inspection Punchlist Deadline, a Pre-Final Inspection Punchlist to Contractor with a copy to TFC.
 - 2.2.6.5.1.1. A/E shall continue to perform the foregoing described service until TFC can issue an appropriate Certificate of Substantial Completion.
 - 2.2.6.5.1.2. In the event that such continued service be required due to causes outside the A/E's direct control (such as, Contractor's errors in reporting readiness of the Work for Inspection; Contractor prematurely requesting substantial completion inspection; significant deficiencies in the Work unexcused delays in the Work; untested or improper performance of systems; or similar failures performed by Contractor or its agents), such service shall constitute an Additional

Service.

2.2.6.5.2. In the event A/E and TFC conclude that the Work, or a discrete and identified phase thereof, has been performed or completed in accordance with the Construction Documents so as to be determined to be substantially complete, TFC shall promptly issue an appropriate Certificate of Substantial Completion as to the completed Work, as provided in UGC, Paragraph 12.1.1.2, and A/E shall promptly take all such steps as are required by TDLR, as TFC's authorized agent, to ensure the Project is completed in compliance with applicable requirements of TDLR including, but not limited to, obtaining a passing inspection by the A/E's Registered Accessibility Specialist.

2.2.6.5.2.1. Any provision in the foregoing to the contrary notwithstanding, A/E shall not recommend the issuance of a Certificate of Substantial Completion if, in its reasonable opinion, A/E determines that any of the items to be contained in the Post-Substantial Completion Inspection Punchlist cannot or, in all reasonable likelihood will not be, satisfactorily completed within thirty (30) days of the date of the Substantial Completion Inspection Deadline.

2.2.6.6. Final Completion. Subject to the provisions of UGC, Subsection 12.1.2, and no later than the Final Inspection Deadline, A/E shall conduct a Final Inspection of the Work, while accompanied by the TFC Project Manager, to determine whether all of the Work for the entire Project has been fully completed in accordance with the Construction Documents.

2.2.6.6.1. In the event TFC and A/E conclude that any of the Pre-Final Inspection Punchlist items have not been corrected or completed in accordance with the Construction Documents, A/E shall prepare and deliver, no later than the Post-Final Inspection Punchlist Deadline, a Post-Final Inspection Punchlist

to Contractor with a copy to TFC.

2.2.6.6.1.1. A/E shall continue to perform the foregoing described service until TFC can issue a Certificate of Final Completion.

2.2.6.6.1.2. In the event that such continued service be required due to causes outside the A/E's direct control (such as, Contractor's errors in reporting readiness of the Work for Inspection; Contractor prematurely requesting substantial completion inspection; significant deficiencies in the Work; unexcused delays in the Work; untested or improper performance of systems or similar failures performed by Contractor or its agents), such service shall constitute an Additional Service.

2.2.6.6.2. In the event A/E and TFC conclude that all of the Work, or all of the Work in a respective discrete or identified phase, has been corrected or completed in accordance with the Construction Documents, and subject to the prior issuance of a Certificate of Substantial Completion, TFC, with A/E signature as appropriate, shall issue and deliver a Certificate of Final Completion to Contractor.

2.2.6.6.2.1. Issuance of a Certificate of Substantial Completion is a condition precedent to Contractor's right to issue notice that the Work will be ready for final inspection.

2.2.6.6.2.2. Issuance of a Certificate of Final Completion is a condition precedent to Contractor's right to receive Final Payment.

2.2.6.7. Close Out. No later than the Close-out & Record Documents Deadline, and prior to A/E's delivery of the Application for Final

Payment to TFC, A/E shall:

- 2.2.6.7.1. Obtain, review and inspect all Close-out Documents, guarantees, bonds and all other fiscal surety instruments, and all other documentation required of the Contractor by the Contract Documents to ensure full and complete compliance. Within five (5) days of such confirmation, A/E shall transmit the above-described documentation to TFC.
- 2.2.6.7.2. Furnish the Record Documents to TFC.
- 2.2.6.7.3. Furnish one (1) digital copy of all Construction Documents to TFC.
 - 2.2.6.7.3.1. Each disk shall be appropriately labeled to include identification of the software program (and version thereof) utilized.
 - 2.2.6.7.3.2. Drawings shall be in CAD format and shall be organized within the layering system in accordance with the A/E Guidelines.
 - 2.2.6.7.3.3. Layer format and names shall be in accordance with the A/E Guidelines.
 - 2.2.6.7.3.4. 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.
 - 2.2.6.7.3.5. It is expressly acknowledged and agreed that the original disks remain the property of the A/E. If differences between the TFC versions and the A/E versions should subsequently be discovered, the A/E versions shall be deemed originals, absent any fraud, malfeasance, or mutual mistake.

- 2.2.6.8. Review Application for Final Payment. Subject to the restrictions set out below, at such time that the Certificate of Final Completion has been issued, A/E shall promptly review and, if in proper form, approve the Application for Final Payment in accordance with the UGC, any Supplementary General Conditions, any Special Conditions, and the Construction Documents.
- 2.2.6.8.1. In order for an Application for Final Payment to be considered complete and subject to approval, Contractor must submit a fully executed Final Payment checklist in such form as is prescribed by TFC to TFC.
- 2.2.6.8.2. No approval of an Application for Final Payment is valid and enforceable unless and until the foregoing subparagraph is fully satisfied.
- 2.2.6.9. Conflicts Regarding Obligations. In the event of any material conflict between the duties and responsibilities of A/E as set out in the UGC, any Supplementary General Conditions, any Special Conditions, the A/E Guidelines, or in any other document referenced herein and incorporated for all purposes, and this Agreement, the duties and responsibilities specified in this Agreement shall control to the extent of such material conflict.
- 2.2.7. Warranty and Guarantee Phase. No later than the Warranty Report Deadline, upon written request of TFC, A/E shall deliver the following warranty and guarantee phase services to TFC:
- 2.2.7.1. On-Site Inspections. At least thirty (30) days prior to the expiration of any warranty period for the Project, or for any applicable portion thereof, conduct at least one (1) on-site visit per appropriate portion to review and inspect all conditions to ensure that all equipment, materials, and workmanship continue to meet the requirements and performance expectations established by the Construction Documents and prepare and deliver to TFC a Warranty Report.
- 2.2.7.2. Claim Assistance. Assist TFC with the resolution of any warranty claims and/or latent defects; and deliver to TFC periodic reports, when requested by TFC, that provide detailed explanations of the status of all warranty claims and/or latent defects.

- 2.2.7.3. Additional Service. The provision of the warranty and guarantee phase services described herein shall constitute an Additional Service.
- 2.2.8. A/E Services During All Phases. A/E shall timely deliver the following services, as applicable, during all phases for which A/E is obligated to provide Professional Services to TFC:
- 2.2.8.1. critically review and closely scrutinize all documents submitted by all third parties;
 - 2.2.8.2. thoroughly review and closely scrutinize the performance, schedules, and costs of Contractor and all its subcontractors;
 - 2.2.8.3. critically review and evaluate Contractor's proposed schedule and costs as relevant to each consultant's discipline;
 - 2.2.8.4. maintain work progress and products consistent with the schedules;
 - 2.2.8.5. provide supplemental information beyond that presented in a submission of documents which may be reasonably requested to assist cost estimating;
 - 2.2.8.6. promptly communicate with pertinent parties, including topics regarding information needs and responses to needs of other parties;
 - 2.2.8.7. actively participate in all meetings and/or teleconferences to bring the full measure of A/E's collective experience, expertise and recommendations to the Project as it pertains to the overall project or to a specific discipline;
 - 2.2.8.8. prepare and deliver all meeting agendas and meeting minutes, field reports, and other similar documentation within one (1) week of the respective work or event, unless directed otherwise by TFC;
 - 2.2.8.9. answer questions and provide clarifications for the Contractor and its Subcontractors to facilitate their thorough examination of all Drawings, Specifications and other documents authored by A/E for accuracy, intended completeness and constructability; and
 - 2.2.8.10. ensure that A/E Project Manager and any other representative of A/E whose presence is requested by TFC attend all meetings and participate in all conference calls that are scheduled by TFC.

- 2.2.9. 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.
- 2.2.9.1. 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.
- 2.2.9.2. A/E is not authorized to commence providing any Professional Services to TFC or any Using Agency with respect to the Project unless and until an appropriate *Notice to Proceed* is delivered by TFC.
- 2.2.9.3. TFC, including by and through the TFC Project Manager, reserves the right to extend any of the deadlines set out above.
- 2.2.10. Inspections. TFC hereby reserves the right, if deemed appropriate by TFC in its sole discretion, to conduct reviews or inspections during the course of design and construction of the Project. However, A/E shall not be relieved of any of its obligations arising pursuant to this Agreement.
- 2.2.10.1. No inspections of the Project conducted by TFC during the course of construction, either singularly or in the aggregate, shall reduce the level or extent of A/E's responsibilities arising pursuant to this Agreement. Neither the approval and/or final acceptance of a Project or any Deliverables, the payment of any Pay Application, or the issuance of any Certificates of Final or Substantial Completion by TFC shall constitute, nor be deemed, a release of A/E's obligation to perform and timely deliver the Professional Services and any Additional Services (i) in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; or (ii) as required under this Agreement.

III. TERM AND TERMINATION

- 3.1. Duration. This Agreement shall be effective as of the Effective Date and shall terminate on [INSERT], unless extended by the parties by amendment to this Agreement or terminated earlier, as provided below.
- 3.2. Early Termination. This Agreement may be terminated by TFC for its convenience, in whole or in part, at any time without cause, upon delivery of a Notice of Termination to A/E at the address of record as specified in this Agreement. Upon receipt of a Notice of Termination, A/E will immediately cease all Professional Services and undertake to

terminate any relevant Subcontracts and will 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.

IV. CONSIDERATION

4.1. Contract Limit–Fees and Expenses.

4.1.1. Option A—Hourly Rate. [If the fee is based on an hourly rate, monthly billing up to a maximum “not to exceed sum,” use the language below. If the fee is fixed, use Option B as set out in Subsection 4.1.2 below.]

4.1.1.1. Fees. In exchange for the timely delivery of the Professional Services as specified by this Agreement, A/E shall be paid fees and Reimbursable Expenses not to exceed the total sum of [INSERT] and No/100 Dollars (\$[INSERT]), which is comprised of a fee for services to be rendered for a maximum amount of [INSERT] and No/100 Dollars (\$[INSERT]) and a maximum amount of [INSERT] and No/100 Dollars (\$[INSERT]) for Reimbursable Expenses. Any Professional Services performed or delivered by A/E prior to the Effective Date of this Agreement or after its termination cannot be compensated.

4.1.1.2. Submission of Pay Applications or Invoices. No more frequently than once per month, A/E shall submit a Pay Application to TFC for (i) services performed based on the schedule set forth in the *Schedule of Rate & Fees*, a digital copy of which is attached hereto and incorporated herein by reference for all purposes in .pdf format on the CD and named therein as “Exhibit G”; and (ii) reasonable and necessary costs and expenses incurred through the last day of the previous month. TFC agrees to pay A/E in accordance with Chapter 2251 of the Texas Government Code, also known as the “Prompt Payment Act.”

4.1.2. Option B—Fixed Fee. [If the fee is a fixed amount, use the language below.]

4.1.2.1. Fixed Fee. In exchange for the timely delivery of the Professional Services as specified in this Agreement, A/E shall be paid a fixed fee of [INSERT] and No/100 Dollars (\$[INSERT]) (hereinafter referred to as “Fees”) plus a maximum sum of [INSERT] and No/100 Dollars (\$[INSERT]) for Reimbursable Expenses, for a total contract amount of [INSERT] and No/100 Dollars (\$[INSERT]). Any Professional Services performed or delivered by A/E prior to the Effective Date of this Agreement or after its

termination cannot be compensated.

4.1.2.2. Submission of Pay Applications or Invoices. No more frequently than once per month, 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 A/E in accordance with Chapter 2251 of the Texas Government Code, also known as the “Prompt Payment Act.”

4.2. Proportional Payments. Payments shall be made to A/E monthly in proportion to the services performed. The compensation for services shall be at the following cumulative percentages at the completion and acceptance of each of the following phases of the Professional Services:

- | | | |
|----------|-------------------------|----------------------------|
| 4.2.1.1. | Pre-Design: | five percent (5%) |
| 4.2.1.2. | Schematic Design: | twenty percent (20%) |
| 4.2.1.3. | Design Development: | forty-five percent (45%) |
| 4.2.1.4. | Construction Documents: | seventy-five percent (75%) |
| 4.2.1.5. | Construction Services: | one hundred percent (100%) |

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

judgment of the TFC, allows for complete substantiation of the costs incurred.

- 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), 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, A/E shall prepare and submit a proposal for such Additional Services to TFC for approval. Additional Services shall be performed at a rate negotiated between TFC and A/E and must be approved by the parties by amendment to this Agreement. Any Additional Services performed or delivered by A/E prior to execution of the Agreement or amendment thereto, as applicable, cannot be compensated.
- 4.6. Payments to Subcontractors. For all services rendered, 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 A/E and Subcontractors.

V. ACKNOWLEDGEMENTS, COVENANTS, AND AGREEMENTS

- 5.1. Acknowledgements, Covenants, and Agreements of TFC. TFC acknowledges, covenants, and agrees as follows:
 - 5.1.1. TFC Deliverables to A/E. TFC shall provide A/E a copy of, or reasonable access to, the following information and documentation regarding the Project, the substance of which A/E shall incorporate into the DD Documents:
 - 5.1.1.1. the UGC;
 - 5.1.1.2. any Supplementary General Conditions;
 - 5.1.1.3. any Special Conditions;
 - 5.1.1.4. sample copies of the following:
 - 5.1.1.4.1. contract forms; and
 - 5.1.1.4.2. bond forms;
 - 5.1.1.5. bidding information and instructions;
 - 5.1.1.6. minimum wage rates;
 - 5.1.1.7. the PAR for inclusion in the Specifications;

- 5.1.1.8. any maps and Drawings in the possession of TFC that reflect or depict Site boundaries, recorded easements, topography, utility locations, and such other documents in the possession of TFC that reflect Site conditions and/or restrictions which may impact the design and/or construction of the Project;
 - 5.1.1.9. any soil reports or traffic impact studies in the possession of TFC;
 - 5.1.1.10. the Project Analysis, or equivalent thereof;
 - 5.1.1.11. the Budget; and
 - 5.1.1.12. the Communication Protocol.
- 5.1.2. TFC Services to A/E. TFC shall provide, or cause to be provided, the following services to A/E:
- 5.1.2.1. upon A/E's receipt of general and criminal background check clearance, assist A/E in obtaining such access to the Sites as is reasonably necessary to enable A/E to provide the Professional Services;
 - 5.1.2.2. designate the TFC Project Manager who will supervise the design and construction of the Project and the services being provided pursuant to this Agreement and the respective Contract Documents; and
 - 5.1.2.3. provide intermediate reviews of the work product of A/E as necessary to allow A/E to proceed with delivery of the Professional Services in a timely manner.
- 5.2. Acknowledgements, Covenants, and Agreements of A/E. A/E acknowledges, covenants, and agrees as follows:
- 5.2.1. Timely Delivery of Conforming Services. A/E will, subject to Force Majeure events, as defined in Section 11.9 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 the Construction Documents which are made necessary by the errors and/or omissions of A/E shall be corrected by A/E at its sole cost and expense.

- 5.2.2.1. For purposes of this subsection, an omission is defined as any change or addition to the Construction Documents required to make the Project conform to its original design intent.
- 5.2.2.2. For purposes of this subsection, an error is defined as any change or addition to the Construction Documents where remediation of previously constructed or installed Work must take place in order to meet code and/or design intent or any omission that is caused by willful misconduct or gross negligence by A/E. In the event that A/E is determined to have been the cause of such an error, A/E shall bear the reasonable construction costs to resolve said error.
- 5.2.3. Limitation of Authority. A/E agrees that the TFC Project Manager 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 Section 2.2 above, any deviation from which must be evidenced by the TFC Project Manager in writing.
- 5.2.4. Cooperation. All project managers, employees, and associated Subcontractors shall cooperate with and assist each other and all other Contractors and design professionals retained by TFC.
- 5.2.5. Identification of A/E Project Manager and All Subcontractors. The A/E Project Manager, A/E's employees, and all Subcontractors identified in the *List of A/E Project Manager and Subcontractors* (hereinafter referred to as the "List"), a digital copy of which is incorporated herein by reference for all purposes in .pdf format on the CD, and named therein as "Exhibit H" will be engaged by A/E to timely provide TFC with the Professional Services.
 - 5.2.5.1. TFC retains the right to require that the A/E Project Manager be committed to the Project on a full time basis. TFC reserves the right to approve the appointment of the A/E Project Manager and to demand that the A/E Project Manager, and any of A/E's employees or Subcontractors, be removed and replaced if, in the sole opinion of TFC, their performance on this Project or any other projects, is and/or was inadequate or their continued involvement with the Project is, will, or has become, detrimental to the timely and successful completion of the Project.
 - 5.2.5.2. The A/E Project Manager and Subcontractors identified in the *List* shall not be removed or replaced by A/E, nor shall any other Subcontractors be engaged by A/E, unless prior written consent is obtained from TFC, which consent shall not be unreasonably

withheld, conditioned, or delayed.

- 5.2.6. Buy Texas. If A/E is authorized to make purchases under this Agreement, A/E certifies that A/E will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Texas Government Code, Chapter 2155.
- 5.2.7. 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 said Deliverables or Professional Services.
- 5.2.8. No Guaranty. A/E does not control or guarantee the performance of any Contractor, provided however, A/E shall promptly notify TFC of any observation of a Contractor's or subcontractor's failure to perform their duties and responsibilities in accordance with the Construction Documents and Work Progress Schedule, and shall recommend to TFC candidate measure(s) to correct such failures.
- 5.2.9. Debts or Delinquencies Owed to the State. Any payment due under this Agreement may be withheld and applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support pursuant to Texas Government Code, Section 43.055.
- 5.2.10. General and Criminal Background Checks.
- 5.2.10.1. A/E represents and warrants that neither A/E nor any of A/E's employees, have been convicted of a felony criminal offense, or of a crime involving moral turpitude, or that, if such a conviction has occurred, A/E has fully advised TFC in writing as to the facts and circumstances surrounding the conviction(s).
- 5.2.10.2. All of A/E's employees and Subcontractors that will perform any Professional Services on-site at a state-owned property shall be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by A/E.
- 5.2.10.2.1. All criminal background check forms for all of A/E employees and Subcontractors that will initially commence any work on-site must be fully completed and submitted to TFC within fifteen (15) days of the date of the notice of award, and the process thereafter must be diligently pursued by A/E.
- 5.2.10.2.2. The process must be satisfactorily completed for

every employee and Subcontractor before they perform services at the Site.

- 5.2.10.2.3. 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 A/E’s employees and/or Subcontractors, DPS or TFC, will adjudicate the results of the criminal background searches in accordance with the criteria set forth in the *Criminal Background Check Criteria and Information*, a digital copy of which is incorporated herein by reference for all purposes in .pdf format on the CD, and named therein as “Exhibit I”. 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.
- 5.2.11. Equal Opportunity. A/E shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. A/E shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. A/E shall post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination subsection. A/E shall include the above provisions in all Subcontracts pertaining to the Professional Services.
- 5.2.12. No Advertising. A/E shall not advertise that it is doing business with TFC or use this Agreement as any sort of marketing or sales tool without the prior written consent of TFC.
- 5.2.13. No Warranties by TFC. A/E acknowledges that any and all tests, maps, reports, and drawings and any other documentation (hereinafter referred to collectively as “Reports”) in the possession of TFC that reflect or depict any Site boundaries, recorded easements, topography, utility locations, and other Site conditions and/or restrictions which may impact A/E’s prosecution of the Work were prepared solely for the benefit of TFC, and that A/E shall have no

right to rely upon such and that any reliance thereon shall be at A/E's own risk. TFC HEREBY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE ABOVE-MENTIONED REPORTS.

- 5.2.14. No Outsourcing. All services under this Agreement shall be performed in the principal offices of the A/E and its consultants. If A/E or consultant offices 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 in writing by the TFC.

VI. WARRANTIES AND REPRESENTATIONS BY A/E

- 6.1. Warranties and Representations by A/E. A/E hereby makes the following warranties, representations and certifications, all of which are true, accurate and complete at the time of the Effective Date and throughout the term of the Agreement, and which shall be true, accurate and complete with respect to each Deliverable. All representations and warranties discussed below shall survive the expiration or termination of this Agreement.
- 6.1.1. Compliance with All Laws. A/E shall procure and maintain for the duration of this Agreement any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by A/E to provide the goods or services required by this Agreement. A/E will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. A/E agrees to be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Agreement. As part of its delivery of the Professional Services, A/E shall make itself familiar with and at all times shall observe and comply with all Laws and Regulations of all Governmental Authorities that in any manner affect performance under this Agreement.
- 6.1.2. Immigration Reform. The Immigration Reform and Control Act of 1986 and 1990 requires that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors and subcontractors who contract with the State. A/E shall not place any employee of A/E at a worksite, nor shall A/E permit any employee, nor any Subcontractor, to perform any Professional Services on behalf of or for the benefit of the State, without first confirming said employee's authorization to lawfully work in the

United States.

- 6.1.2.1. A/E warrants that A/E: (i) maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with applicable law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to A/E's senior management; and (iv) is without knowledge of any fact that would render any employee or Subcontractor ineligible to legally work in the United States.
- 6.1.2.2. A/E further acknowledges, agrees, and warrants that A/E: (i) has complied, and shall at all times during the term of the Agreement comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement ("DHS-ICE"), including, without limitation, the completion and maintenance of the Form I-9 for each of A/E's employees; and (iii) has responded, and shall at all times during the term of the Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Agreement, A/E shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by TFC or any state agency of A/E or any of its employees.
- 6.1.2.3. A/E acknowledges, agrees, and warrants that all Subcontractors permitted by it to perform Professional Services will be required to agree to these same terms as a condition to being awarded any Subcontract for such work.
- 6.1.3. Proficiency in Systems. A/E is proficient in the use of CAD systems and the EPMCS utilized by TFC.
- 6.1.4. Warranty of Services. All Professional Services provided by A/E pursuant to 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.

- 6.1.5. Warranty of Deliverables. All Deliverables shall be: (i) completed and delivered in a timely manner and in a manner consistent with standards in the applicable trade, profession, or industry; (ii) conform to or exceed the specifications set forth in this Agreement; and (iii) be fit for ordinary use, of good quality, and with no material defects.
- 6.1.6. Eligibility. A/E certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate pursuant to Texas Government Code, Section 2155.004(b).
- 6.1.7. Family Code Disclosure of Ownership. 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, A/E has provided, prior to its execution of this Agreement, the name and social security number of each such person (sole proprietors, firm owners, partners, or shareholders) holding at least twenty-five percent (25%) ownership of the business entity entering into this Agreement. A/E acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 6.1.8. Deceptive Trade Practices Act; Unfair Business Practices Disclosures. A/E has not been found liable of Deceptive Trade Practices Act violations under Chapter 17 of the Texas Business and Commerce Code or of any unfair business practice in any administrative hearing or court suit. A/E further certifies that it has no officers who have served as officers of other entities who have been found liable of Deceptive Trade Practices violations or of any unfair business practices in an administrative hearing or court suit. In the event that allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code or of any unfair business practices against either A/E or any of A/E's officers have occurred or are currently pending in an administrative proceeding or in a lawsuit filed with any court, then A/E has disclosed all such matters to TFC and provided a brief description of each allegation, information regarding the administrative body or court before which the matter is pending, and the current status of the matter.
- 6.1.9. Disclosure of Former State Executives. Pursuant to Texas Government Code, Section 669.003 relating to contracting with an executive of a state agency, no Person who, in the past four (4) years served as an executive of TFC or any other state agency was involved with or has any interest in this Agreement or

any Contract resulting from this Agreement. If A/E employs or has used the services of a former executive head of TFC or any other state agency, then A/E has provided the name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with A/E, and the date of employment with A/E.

- 6.1.10. Financial Interests/Gifts. Neither A/E nor any of its principals, officers, directors, employees, other agents, or relatives within the second degree of consanguinity or affinity have 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 pursuant to Texas Government Code, Sections 572.051, 2255.001 and Texas Penal Code, Section 36.09.
- 6.1.11. Prior Employment. A/E knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in A/E's firm or corporation. A/E further certifies that no partner, corporation, or unincorporated association that employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which A/E will be dealing on behalf of TFC pursuant to Texas Government Code, Chapter 573 and Section 2254.32. Furthermore, A/E certifies and agrees that if it employs any former employee of TFC, such employee will perform no work in connection with this Agreement during the twelve (12) month period immediately following the employee's last date of employment at TFC.
- 6.1.12. Affirmation as to Submittals. Upon submittal to TFC of any documentation or data that was created or modified by A/E, including but not limited to Drawings, Specifications, and the Budget, all representations contained therein shall be true and accurate as to each such creation or modification.

VII. STATE FUNDING

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

VIII. COPYRIGHTS AND TRADEMARKS

- 8.1. Copyrights. A/E agrees that all Deliverables provided pursuant to this Agreement are subject to the rights of TFC in effect on the date of execution of this Agreement. These rights include the right to use, duplicate and disclose such subject matter and data, in whole or in part, in any manner for alterations, additions, remodels or maintenance; and to have others do so including production of Deliverables in response to a public information request pursuant to Texas Government Code, Chapter 552. If the Deliverables produced by A/E are subject to copyright protection, A/E hereby grants to TFC a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such and to authorize others to do so. A/E shall include appropriate provisions to achieve the purpose of this condition in all Subcontracts entered into that produce information subject to copyright protection.
- 8.1.1. Disclaimers. All such Deliverables furnished by A/E pursuant to this Agreement shall be considered instruments of its services in respect to the Project. It is understood that A/E does not represent such Deliverables to be suitable for reuse on any other study or for any other purpose(s). If A/E, at TFC's request and authorization, verifies or adapts A/E's Deliverables for TFC's use on another study, A/E shall be compensated for redesign or new design, bidding, and construction administration services.
- 8.1.2. Delivery to TFC. A/E shall promptly provide copies of the Deliverables to TFC upon completion, termination, or cancellation of this Agreement for any reason, including all copies of the Deliverables in any form or medium specified by TFC in this Agreement, whether written, digital, or electronic.
- 8.1.3. TFC Right to Use. Any provision herein to the contrary notwithstanding, TFC shall be authorized to make subsequent use of the Deliverables for any and all future renovations, modifications, alterations, maintenance, repairs, and the like of the Project.
- 8.2. No Use of Name or Trademark. A/E agrees not to make any written use of or reference to TFC's name or registered or unregistered trademarks for any marketing, public relations, advertising, display or other business purpose or make any use of TFC's facilities for any activity related to the express business purposes and interests of TFC pursuant to this Agreement, without the prior written consent of TFC, which consent may be withheld or granted in TFC's sole discretion.

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

- 9.1. Books and Records. A/E shall keep and maintain under generally accepted accounting principles full, true and complete records, as are necessary to fully disclose to TFC or the

United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with the terms and conditions of this Agreement and all state and federal regulations and statutes.

- 9.2. Inspections and Audits. A/E agrees that all relevant records related to this Agreement or any work product under this Agreement, including practices of its Subcontractors, shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of A/E where such records may be found, with or without notice by the Texas State Auditor's Office ("SAO"), the contracting agency or its contracted examiners, or the Office of the Texas Attorney General, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All Subcontracts shall reflect the requirements of this section. In addition, pursuant to Texas Government Code, Section 2262.003, the SAO may conduct an audit or investigation of any entity receiving funds under this Agreement, including direct payments to A/E and indirect payments under a Subcontract to this Agreement; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation.
- 9.3. Records Retention. All records relevant to this Agreement shall be retained for a minimum of four (4) 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 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.
- 9.4. Confidentiality Provisions Applicable to A/E.
- 9.4.1. Protection of Confidential Information. A/E hereby acknowledges, understands and agrees (i) that in the course of conducting its due diligence regarding the provision of Professional Services to TFC, certain Confidential Information, as defined below, will be disclosed to A/E; and (ii) that whether developed by TFC or others employed by or associated with TFC, all Confidential Information is, and shall remain, the exclusive and confidential property of TFC, and shall be at all times regarded, treated and protected as such by A/E in accordance with this Agreement. Failure to mark any information "Confidential" shall not affect the confidential nature of such information.
- 9.4.2. Definition of Confidential Information. "Confidential Information" shall mean all information, whether or not originated by TFC, which is used in, or a part of, TFC's business and operations and is (i) proprietary to, about, or

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

- 9.4.2.1. work product resulting from, or related to, work, projects, or services performed or to be performed by TFC for A/E 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 Chapter 2267 of the Texas Government Code, *Public and Private Facilities and Infrastructure as added by Acts 2011, 82nd Leg., ch. 1334, § 1*, 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 A/E in breach of the terms of this Agreement; (ii) becomes available to A/E from a source (other than TFC) which source is not, to the best of A/E’s knowledge, subject to any legally binding obligation to keep the same confidential; or (iii) has been independently acquired or developed by A/E.

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

9.4.3.1. No Disclosure. Both during and forever after the performance of its due diligence investigation, A/E will not disclose Confidential Information to any Person or entity other than as necessary in carrying out its duties on behalf of TFC and/or due diligence investigation, without first obtaining TFC’s prior, written consent, and A/E will take all reasonable precautions to prevent inadvertent disclosure of such Confidential Information. This prohibition against A/E’s disclosure of Confidential Information includes, but is not limited to, disclosing the fact that any similarity exists between the Confidential Information and information

independently developed by another Person or entity, and A/E understands that such similarity does not excuse A/E from abiding by its covenant or other obligations pursuant to this Agreement.

- 9.4.3.2. No Use, Copying, or Transfer. Both during and after the conduct of its due diligence investigation, A/E will not use, copy, or transfer Confidential Information other than as necessary in carrying out its duties on behalf of TFC and/or due diligence investigation, without first obtaining prior written consent of TFC, and will take all reasonable precautions to prevent inadvertent use, copying, or transfer of such Confidential Information. This prohibition against A/E's use, copying, or transfer of Confidential Information includes, but is not limited to, selling, licensing or otherwise exploiting, directly or indirectly, any products or services (including software in any form) that embody or are derived from Confidential Information.
- 9.4.3.3. No Use of Name or Trademark. A/E agrees not to make any written use of or reference to TFC's name or registered or unregistered trademarks (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. Non-Circumvention. A/E agrees not to utilize, either directly or indirectly, any Confidential Information in order to facilitate or create direct business relationships with Business Customers of TFC.
- 9.4.4. Open Records Request or Similar Requests for Information. In the event that A/E receives a request to disclose all or any part of the Confidential Information under the terms of the Texas Public Information Act, a subpoena or other order issued by a court of competent jurisdiction or by another governmental agency, A/E shall (i) notify TFC of the existence, terms, and circumstances surrounding such a request within one (1) business day of the receipt of the request, (ii) notify the entity requesting the information that such a request for information should be submitted to TFC, not A/E, (iii) provide the entity requesting the information the contact information of TFC's public information coordinator, (iv) forward all responsive information to TFC within two (2) business days of the receipt of the request.

- 9.5. Confidentiality Provisions Applicable to TFC. Subject to the provisions of Section 9.6 below, TFC shall keep confidential all information, in whatever form, produced, prepared, or observed by A/E to the extent that such information is:
- 9.5.1. confidential by law;
 - 9.5.2. marked or designated “confidential,” or words to that effect, in a font size no smaller than 14 point, by A/E; or
 - 9.5.3. information that TFC is otherwise required to keep confidential by this Agreement.
- 9.6. Public Records. Pursuant to Chapter 552 of the Texas Government Code, the Texas Public Information Act (the “Act”), information and documents received from A/E are subject to the Act and may be open to public inspection and copying. TFC has a duty to disclose information unless a particular record is made confidential by law or exempted from the Act. Whether information may be withheld from required public disclosure pursuant to the Act is determined by the Office of the Attorney General, not TFC. A/E may clearly label individual documents as a “trade secret” provided that A/E thereby agrees to indemnify and defend TFC for honoring such a designation. The failure to so label any document that is released by TFC shall constitute a complete waiver of any and all claims for damages caused by any release of the information. If a public information request for a labeled document is received by TFC, TFC will notify A/E of the request in accordance with the Act.

X. INSURANCE

- 10.1. Insurance Requirements. A/E shall timely obtain and maintain insurance in the following types and amounts for the duration of this Agreement (unless specifically provided otherwise herein), and must timely comply with the following additional insurance requirements:
- 10.1.1. Proof of Satisfaction of Insurance Requirements. As soon as reasonably practicable, but in no event later than three (3) days of receipt of a notice of award, A/E shall have:
 - 10.1.1.1. obtained and shall continue to maintain, at no expense to TFC, insurance in the types and amounts specified below; and
 - 10.1.1.2. delivered, or caused to be delivered, to TFC, at no expense to TFC, a duly executed *Proof of Satisfaction of Insurance Requirements* (hereinafter referred to as the “Proof of Satisfaction”), a copy of which is incorporated herein by reference for all purposes in .pdf format on the CD and named therein as “Exhibit J” and the

insurance documentation described therein.

10.1.2. Amounts and Types of Insurance. The amounts and types of required insurance coverages are as follows:

10.1.2.1. Workers' Compensation and Employers' Liability Insurance. By execution of an Agreement, A/E thereby certifies, pursuant to Tex. Lab. Code, §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: (i) \$1,000,000 each accident; (ii) \$1,000,000 disease each employee; and (iii) \$1,000,000 disease policy limit.

10.1.2.1.1. As per Tex. Lab. Code §406.096(b), A/E shall require each Subcontractor to certify in writing to the A/E that said Subcontractor provides workers' compensation and employers' liability insurance for all of Subcontractor's employees employed on this public project. A/E shall forward said certifications to TFC within ten (10) days of the execution of the Contract.

10.1.2.1.2. The policy must include an Other States Endorsement to include the State of Texas if A/E's business is domiciled outside the State of Texas.

10.1.2.2. Commercial General Liability. Commercial general liability coverage including premises; operations; blanket contractual liability coverage assumed under the Contract and all contracts relative to the Project, including independent contractor's liability pursuant to unamended ISO, or its equivalent; products and completed operations; and extended to include explosion, collapse, and underground hazards, with a combined single limit of \$1,000,000 per occurrence for coverage AB&C and a general aggregate of \$2,000,000.

10.1.2.2.1. The policy shall include endorsement CG2503, Amendment of Aggregate Limits of Insurance (per Project), or its equivalent.

10.1.2.3. Business Automobile Liability Insurance. Business automobile liability coverage for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. Alternate

acceptable limits are \$1,000,000 bodily injury per person, \$1,000,000 bodily injury per occurrence, and at least \$1,000,000 property damage liability per accident.

10.1.2.3.1. No aggregate shall be permitted.

10.1.2.3.2. Such insurance must include coverage for loading and unloading hazards.

10.1.2.4. Architect/Engineers Professional Liability Insurance.

10.1.2.4.1. Architect/Engineers professional liability/errors & omissions coverage with a minimum limit of \$1,000,000 per claim and in the aggregate to pay on behalf of the insured all sums which the insured 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.

10.1.2.4.2. A/E shall maintain coverage for the duration of this Agreement or for not less than twenty-four (24) months following Final Completion of the Project, whichever is longer.

10.2. General Requirements for All Insurance. The following provisions shall apply to all insurance requirements:

10.2.1. Deductibles and Self-Insured Retentions. A/E shall be responsible for all deductibles and self-insured retentions, if any, stated in policies. All deductibles and self-insured retention shall be disclosed on the certificates of insurance required above.

10.2.2. Claims-Made Policies. If coverage is underwritten on a claims-made basis, the retroactive date for the policy and all renewals 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. Any premiums for this extended reporting period shall be paid by A/E.

10.2.3. Additional Policy Requirements. In the event the primary insurance policy does not so provide, A/E shall obtain and maintain endorsements as to each deficient policy, or provide such other document(s) as may be approved in advance by TFC, that satisfy all of the following requirements:

- 10.2.3.1. naming **”Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711, its officials, directors, employees, representatives, and volunteers”** as additional insureds, provided however, this requirement does not apply to professional liability insurance or workers’ compensation insurance;
 - 10.2.3.2. the policy, or such other document(s) as may be acceptable to TFC, must obligate the insurer, or a third-party acceptable to TFC, to notify Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711, of any: (i) non-renewal; (ii) cancellations; or (iii) material changes, at least thirty (30) days prior to change or cancellation, except in the case of cancellation for non-payment of premiums, the notification must be at least ten (10) days prior to cancellation.
 - 10.2.3.2.1. “Material Change” means any of the following changes to the Policy during the term of the Policy:
 - 10.2.3.2.1.1. a change in the Policy period;
 - 10.2.3.2.1.2. a material revision to, or removal of, a coverage section;
 - 10.2.3.2.1.3. 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
 - 10.2.3.2.1.4. an increase of the amount of any self-insured retentions;
 - 10.2.3.3. as to those policies wherein TFC is an additional insured, said insurance coverages must be primary and non-contributing with respect to insurance or self-insurance carried by TFC, if any; and
 - 10.2.3.4. the policy must provide for a waiver of subrogation rights to TFC for the workers’ compensation, employers’ liability, commercial general liability, and business automobile liability policies.
- 10.2.4. No Commencement of Work. A/E shall not commence the performance of Professional Services under this Agreement until they have obtained the required insurance and until such insurance has been reviewed and approved

by TFC. A/E shall not allow any Subcontractors to commence work until the required insurance has been obtained and approved. Approval of insurance by TFC shall not relieve or decrease the liability of A/E hereunder.

- 10.2.5. Qualifications of Insurer. 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.
- 10.2.6. No Cancellation or Lapse. A/E shall not cause or permit any required insurance to cancel or lapse prior to the expiration of all warranty periods, provided however, policy duration for architect/engineers professional liability/errors & omissions coverage is not governed by this provision.
 - 10.2.6.1. A/E must update all expired policies prior to submission of any Application for Payment.
- 10.2.7. Notice of Erosion. A/E shall provide TFC thirty (30) days written notice of erosion of any aggregate limits below the minimum amounts required by the Agreement.
- 10.2.8. Right to Review. TFC reserves the right to review the insurance requirements of this Article X during the effective period of the Agreement and to require reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions or the claims history of the industry as well as A/E, provided that such adjustments are commercially available to A/E).
- 10.2.9. Losses Paid by A/E. Actual losses not covered by insurance as required by this Agreement shall be paid by A/E.
- 10.2.10. Failure to Timely Obtain or Properly Maintain Insurance. Failure to timely obtain and/or properly maintain the insurance coverages as required under this Agreement may subject A/E to, among all other available remedies, at law or in equity, the following:
 - 10.2.10.1. disqualification from eligibility to participate in any other or future projects with TFC;
 - 10.2.10.2. suspension of Work;
 - 10.2.10.3. in the event A/E fails to timely renew or pay any of the renewal premiums for any expiring policies, TFC shall have the right (but not the obligation) to: make such payments; and/or acquire replacement coverage, and set off the amount(s) or costs thereof against the next payment(s) coming due to A/E under the

Agreement or under any other agreement between TFC and A/E;
and/or

- 10.2.10.4. TFC may withhold any payments to A/E until satisfaction is achieved.
- 10.2.11. TFC a Third-Party Beneficiary. TFC shall be a third-party beneficiary of any agreement(s) between A/E and any and all Persons who procure, or cause to be procured, the above-described insurance coverages, and all renewals thereof, for the Project.
- 10.2.12. Required Insurance Coverages No Effect On Indemnifications. The insurance and insurance limits required herein shall not be deemed as a limitation on A/E's liability under the indemnifications granted to TFC.
- 10.2.13. No Warranty That Insurance Limits Will Be Adequate to Fully Protect A/E. The insurance requirements set out herein shall not be interpreted as any representation or warranty that the insurance coverage and limits will necessarily be adequate to fully protect A/E.

XI. MISCELLANEOUS PROVISIONS

- 11.1. Indemnity. **TO THE FULLEST EXTENT PERMITTED BY LAW, A/E SHALL INDEMNIFY AND HOLD HARMLESS TFC AND THE STATE OF TEXAS, THEIR AGENTS, ITS OFFICIALS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS, FROM ALL LIABILITY AND DAMAGES 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 (CHAPTER 101, TEX. CIVIL PRACTICE AND REMEDIES CODE), OR ANY OTHER SUCH LAWS. A/E SHALL FURTHER SO INDEMNIFY 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 A/E, 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 PRODUCT OR SERVICES; OR FROM BREACH OF ANY REPRESENTATION OR WARRANTY HEREIN. THESE REQUIREMENTS SHALL SURVIVE THE TERM OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO TFC.**

- 11.2. Historically Underutilized Businesses (“HUBs”). In accordance with state law, it is TFC’s policy to assist HUBs, whether minority or women-owned, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling A/E’s obligations with TFC. If A/E subcontracts with others for some or all of the services to be performed under this Agreement, A/E shall comply with all HUB requirements pursuant to Chapter 2161 of the Texas Government Code. A/E has submitted an approved *HUB Subcontracting Plan*, a digital copy of which is incorporated herein by reference for all purposes in .pdf format on the CD, and named therein as “Exhibit K”. A/E shall provide TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the *HUB Subcontracting Plan Progress Assessment Report (“PAR”)*, a digital copy of which is incorporated herein by reference for all purposes in .pdf format on the CD, and named therein as “Exhibit L.” PARs shall be submitted monthly with each invoice and are a condition of payment.
- 11.3. Relationship of the Parties. A/E is associated with TFC only for the purposes and to the extent specified in this Agreement, and with respect to performance of the contracted services pursuant to this Agreement, A/E is and shall be an independent contractor. Subject only to the terms of this Agreement, A/E shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of A/E or any other party. A/E shall be solely responsible for, and TFC shall have no obligation with respect to:
- 11.3.1. withholding of income taxes, FICA, or any other taxes or fees;
 - 11.3.2. industrial or workers’ compensation insurance coverage;
 - 11.3.3. participation in any group insurance plans available to employees of the State of Texas;
 - 11.3.4. participation or contributions by the State to the State Employees Retirement System;
 - 11.3.5. accumulation of vacation leave or sick leave; or
 - 11.3.6. unemployment compensation coverage provided by the State.
- 11.4. No Assignment and Subcontracts. A/E shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Agreement without the prior written consent of

TFC. Notwithstanding the foregoing, it is mutually understood and agreed that A/E may engage Subcontractors to perform some or all of the Professional Services. In any approved Subcontracts, A/E shall legally bind such Subcontractor to perform and make such Subcontractor subject to all the duties, requirements, and obligations of A/E specified herein. Nothing herein shall be construed to relieve A/E of the responsibility for ensuring that the goods delivered and/or the services rendered by A/E and/or any of its Subcontractors comply with all the terms and provisions of this Agreement. A/E must provide written notification to TFC of any such Subcontractor performing work under this Agreement, including the name and taxpayer identification number of Subcontractor, the task(s) being performed, and the number of Subcontractor employees expected to work on the task.

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

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

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

If to A/E: [Insert Name of A/E Firm]
 [Insert Street Address]
 [Insert City, State, and Zip Code]
 Attention: [Insert Name and Title of A/E]

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.

- 11.7. Governing Law and Venue. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought pursuant to this Agreement shall be in a court of competent jurisdiction in Travis County, Texas. A/E hereby irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of, or responding to, any action or proceeding in such jurisdiction with respect to this Agreement or any document related hereto.
- 11.8. Proper Authority. The parties hereto represent and warrant that the Person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement. A/E acknowledges that this Agreement is effective only for the period of time specified in the Agreement.
- 11.9. 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.
- 11.9.1. 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.
- 11.9.2. If possible, the notice shall set forth the extent and duration thereof.
- 11.9.3. 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. However, if nonperformance continues for more than thirty (30) days, TFC may terminate this Agreement immediately upon written notification to A/E. Changes in the schedule or in the design or scope of the Project as a result of any Force

Majeure which affect the cost of the A/E's services under this Agreement require a written amendment to this Agreement.

11.10. Dispute Resolution. Subject to the provisions of Chapter 114 of the Civil Practice & Remedies Code (the "Code"), 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.

11.10.1. Notice and Opportunity to Cure. Waiver of Claims. Prior to bringing a civil suit against TFC pursuant to the provisions of Chapter 114 of the Code, A/E must deliver written notice to TFC not later than [Insert e.g. ninety (90) days] after the date of the event giving rise to the claim, that:

11.10.1.1. sets out with particularity the nature of the alleged breach and the amount sought as damages; and

11.10.1.2. request that the claim be submitted to mediation, as that term is defined in Section 154.023 of the Code.

11.10.1.3. **IN THE EVENT A/E FAILS TO TIMELY SATISFY THE FOREGOING REQUIREMENTS, A/E SHALL AUTOMATICALLY, WITHOUT NEED FOR FURTHER NOTICE OR ACTION, BE DEEMED TO HAVE WAIVED ANY CLAIMS BASED UPON THE EVENT(S) IN QUESTION.**

11.10.1.4. TFC shall be entitled to thirty (30) days to accept, reject, or make a counter-offer to the demand (hereafter referred to as the "Cure Period"), during which period A/E may not bring a civil suit against TFC.

11.10.1.5. In the event that TFC requests in good faith within fifteen (15) days of receipt of the demand, additional and/or further information concerning the demand, the afore-mentioned Cure Period shall be automatically extended for an additional [Insert e.g. thirty (30) days], during which additional period A/E may not bring a civil suit against TFC.

11.10.1.6. In the event TFC makes a counter-offer, A/E must accept or reject the counter-offer within thirty (30) days of the date of its receipt, or the counter-offer shall be deemed automatically rejected.

11.10.2. Mediation. In the event the claim under Chapter 114 of the Code is not resolved by the foregoing procedure, the parties must attempt to resolve the

claim through the process of mediation.

11.10.2.1. Except as may be provided otherwise herein, the mediation process shall be governed by the provisions of Chapter 154 of the Code.

11.10.2.2. The parties shall attempt to agree upon a single mediator within thirty (30) days of the expiration of the Cure Period.

11.10.2.3. In the event the parties fail to timely agree upon a mediator, each party shall select a mediator and notify the other party of such selection within sixty (60) days of the expiration of the Cure Period. These two mediators shall select a third mediator within [Insert e.g. ninety (90) days] after expiration of the Cure Period, and said third mediator shall conduct the mediation.

11.10.2.4. The mediation shall take place within [Insert e.g. one hundred eighty (180) days] after expiration of the Cure Period.

11.10.2.5. A/E may not bring a civil suit until the expiration of [Insert e.g. ten (10) days] after the mediation is completed.

11.11. 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.

11.12. 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.

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

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

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

- 11.15.1. In the event A/E brings a civil suit against TFC and prosecutes it to final judgment pursuant to Chapter 114 of the Code, any recovery by A/E shall be specifically limited to the balance due and owed by TFC on the Agreement as it may have been amended, including any amounts owed by written change orders.
- 11.15.2. Pre-judgment and post-judgment interest shall be limited to the rate of [Insert e.g. three percent (3%)] per annum.
- 11.15.3. **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.**
- 11.16. No Waiver of Sovereign Immunity. **Except as may be expressly and specifically provided otherwise by Chapter 114, Tex. Civ. Prac. & Rem. Code, nothing in this Agreement shall be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas, TFC or the Using Agency.** The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under the Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.
- 11.17. 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.
- 11.18. 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.
- 11.19. Further Assurances. A/E shall take such actions and execute such other and additional documents as are reasonably necessary or desirable in order to carry out the purposes and intent of this Agreement.
- 11.20. No Presumptions for Ambiguities. Each party hereby represents and warrants that

although the initial draft of this Agreement and any exhibits may have been prepared by one party, both parties have been given the opportunity to review this Agreement and those exhibits with counsel of their choice, and have made additions, revisions, and amendments hereto. Therefore, each party hereby covenants and agrees that they are co-drafters of this Agreement and those exhibits such that any ambiguities cannot be construed against any party.

- 11.21. 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.
- 11.22. Schedule of Exhibits. The following shall be the exhibits to this Agreement, which are contained on the CD, and are hereby incorporated herein by reference:
- 11.22.1. Exhibit A. UGC;
 - 11.22.2. Exhibit B. Supplementary General Conditions;
 - 11.22.3. Exhibit C. Special Conditions;
 - 11.22.4. Exhibit D. A/E Guidelines;
 - 11.22.5. Exhibit E. Budget;
 - 11.22.6. Exhibit F. Professional Services Schedule;
 - 11.22.7. Exhibit G. Schedule of Rates & Fees [**Inapplicable if Fee is FIXED**];
 - 11.22.8. Exhibit H. List of A/E Project Manager and Subcontractors;
 - 11.22.9. Exhibit I. Criminal Background Check Criteria and Information;
 - 11.22.10. Exhibit J. Proof of Satisfaction of Insurance Requirements;
 - 11.22.11. Exhibit K. HUB Subcontracting Plan; and
 - 11.22.12. Exhibit L. HUB Subcontracting Plan PAR.
- 11.23. Entire Agreement and Modification. This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any

such attachment and this Agreement shall be construed consistently with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification, renewal, extension, or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

TEXAS FACILITIES COMMISSION

[INSERT]

By: _____
Terry Keel, Executive Director

By: _____

[Insert Printed Name & Title of
Signatory]

Date of Execution: _____

Date of Execution: _____

G.C. _____

Dir. _____

D.E.D. _____