

**AMENDMENT NO. 1
TO THE
BUILDING ENCLOSURE COMMISSIONING SERVICES
CAPITOL COMPLEX PHASE 1
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
TERRACON CONSULTANTS, INC.**

This Amendment No. 1 to the Professional Architectural/Engineering Services Agreement (hereinafter referred to as “Amendment No. 1”) is entered into by and between the Texas Facilities Commission (hereinafter referred to as “TFC”), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701, as Owner (as defined in UGC, Section 1.28), and Terracon Consultants, Inc., as Building Enclosure Commissioning Agent (as defined below) (hereinafter referred to as “BECxA”), located at 5307 Industrial Oaks Boulevard, Suite 160, Austin, Texas 78735 (hereinafter referred to collectively as the “Parties”), to amend the original Professional Architectural/Engineering Services Agreement between the Parties.

RECITALS

WHEREAS, on May 22, 2018, the Parties entered into that one certain *Professional Services Architectural/Engineering Services for Building Enclosure Commissioning Services Capitol Complex Phase I Between The Texas Facilities Commission and Terracon Consultants, Inc.* (hereinafter referred to as the “Agreement”); and

WHEREAS, the Parties now desire to amend the Agreement to provide for Additional Services to include eleven (11) periodic manufacturer facility site visits, and for additional fees in the amount of Twenty-Eight Thousand Six Hundred and No/100 Dollars (\$28,600.00), and

WHEREAS, the Parties also desire to include additional provisions, terms and conditions adopted subsequent to the execution of the Agreement that reflect the will of the Texas Legislature, or are included in compliance with action(s) or requirements of the State Auditor’s Office, the Office of the Attorney General, or the Comptroller of Public Accounts;

NOW THEREFORE, the Parties hereby agree as follows:

1. Unless clearly provided otherwise herein, all terms and phrases in initial caps herein shall have the same meaning as the terms and phrases with initial caps in the Agreement.
2. The Parties hereby agree to amend ARTICLE I – DEFINITIONS, by adding the following:

“*HUB Compliance Reporting System* means the Texas Facilities Commission Historically Underutilized Business (“HUB”) online reporting system located at <https://tfc.gob2g.com>. The *HUB Compliance Reporting System* is used to maintain

business records documenting compliance with the HUB Subcontracting Plan (“HSP”) by submission of monthly Progress Assessment Reports. See Section 11.2, Historically Underutilized Businesses (“HUBs”).”

3. The Parties hereby agree to modify ARTICLE II – SCOPE OF SERVICES, Section 2.1, Scope of Services, Subsection 2.1.6, Construction Phase Services, by adding sub-paragraph 2.1.6.5.1, as follows:

“2.1.6.5.1. BECxA shall provide eleven (11) additional periodic manufacturer facility site visits for 1801 Congress Avenue during the production of the curtain wall system to determine if the installation is in general conformance with the Construction Documents and to address envelope related constructability issues as more particularly described in BECxA’s Supplement to Agreement, Reference Number FW176113 attached hereto and incorporated herein for all purposes as “Exhibit A-1. Manufacturing facility site visits shall be limited to within a 300 mile radius of Austin, Texas.”

4. The Parties hereby agree to modify ARTICLE IV – CONSIDERATION, Section 4.1, Contract Limit-Fees and Expenses, Subsection 4.1.1, Fixed Fee, by reflecting an additional amount of Twenty-Eight Thousand Six Hundred and No/100 Dollars (\$28,600.00), as follows:

“4.1.1. Fixed Fee. In exchange for the timely delivery of the Professional Services as specified by this Agreement, BECxA shall be paid a fixed fee of Nine Hundred Eighty-Five Thousand Four Hundred and No/100 Dollars (\$985,400.00). Any Professional Services performed or delivered by BECxA prior to the Effective Date of this Agreement or after its termination cannot be compensated. Such Fixed Fee shall be paid to BECxA pursuant to the BECxA’s Fee Schedule and Staffing Plan, “Exhibit E.”

5. The Parties agree to replace the title of ARTICLE VI, “WARRANTIES AND REPRESENTATIONS MADE BY CXA,” so that it reads as follows:

“ARTICLE VI – WARRANTIES AND REPRESENTATIONS BY BECXA.”

6. The Parties agree to modify ARTICLE VI – WARRANTIES AND REPRESENTATIONS MADE BY BECXA, by deleting Section 6.1.15, Prohibition Against Boycotting Israel, and replacing it with Section 6.1.15, Entities that Boycott Israel, as follows:

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

7. The Parties agree to modify ARTICLE VI – WARRANTIES AND REPRESENTATIONS MADE BY BECXA, by adding Sections 6.1.16 through and including 6.1.20, as follows:

“6.1.16. Prohibition Against Contracting with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations. In accordance with Section 2251.152 of the Texas Government Code, TFC is prohibited from entering into a governmental contract (as defined in Texas Government Code Section 2252.151(3)) with a company that is identified on a list prepared and maintained under Texas Government Code Section 806.051, 807.051, or 2252.153. If BECxA is on the above-referenced list the Agreement will be considered void or voidable and TFC will not be responsible to pay BECxA for any work performed.

6.1.17. Certification Concerning Restricted Employment for Former State Officers or Employees Under Government Code § 572.069. BECxA certifies that it has not employed and will not employ a former TFC or state officer who participated in a procurement or contract negotiation for TFC involving BECxA within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose service or employment ceased on or after September 1, 2015.

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

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

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

8. The Parties agree to modify ARTICLE X – INSURANCE, Section 10.2.1, Workers’ Compensation and Employers’ Liability Insurance, by deleting Subsection 10.2.1.1, and replacing it with Section 10.2.1.1, as follows:

“10.2.1.1. Pursuant to Texas Labor Code §406.096(b), BECxA shall require each Subcontractor to certify in writing to BECxA that said Subcontractor provides workers’ compensation and employers’ liability insurance for all of Subcontractor’s employees employed on this public project. In keeping with Sections 5.2.8 and 5.2.9 of Exhibit A, 2015 Uniform General Conditions, Owner is entitled, upon request and without expense, to receive copies of Subcontractor’s written certifications.”

9. The Parties agree to modify ARTICLE XI – MISCELLANEOUS PROVISIONS, by

adding Subsection 11.2.1, as follows:

“11.2.1. Requirement to Utilize HUB Compliance Reporting

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

10. The Parties agree to modify ARTICLE XI – MISCELLANEOUS PROVISIONS, by re-numbering Section 11.28, Entire Agreement and Modification, as Section 11.30, and by adding Sections 11.28 and 11.29, so that the added sections and the re-numbered Section 11.30 read in their entirety, as follows:

“11.28. Abandonment and Default. If BECxA defaults on this Agreement, TFC reserves the right to cancel the Agreement without notice and either re-solicit or re-award the Agreement to the next best responsive and responsible respondent. The defaulting BECxA will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work.

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

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11.30. 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.”

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

TEXAS FACILITIES COMMISSION

TERRACON CONSULTANTS, INC.

DocuSigned by:
By: Mike Novak, Executive Director
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DocuSigned by:
By: James Bierschwale, Vice President, Terracon
6BB450DD8CAB424...

Mike Novak

James Bierschwale

Executive Director

Vice President

Date of execution: 12/19/2019 | 1:35 PM CST

Date of execution: 12/19/2019 | 11:15 AM CST

GC CR

Dir mn

D.E.D [Signature]

TFC Contract No. 18-175-000
Terracon Consultants, Inc.
Amendment No. 1
Project No. 16-018C-8001

Exhibit A-1
BECxA's Supplement to Agreement for Services, Reference Number FW176113



TFC Contract No. 18-175-000

Exhibit A-1

Reference Number: FW176113

SUPPLEMENT TO AGREEMENT FOR SERVICES

**CHANGE TO
SCOPE OF SERVICES AND FEES**

This SUPPLEMENT to AGREEMENT FOR SERVICES to the original Proposal for Professional Services (original Proposal dated 03/5/2018 and revised 05/15/2018, Proposal reference number PFW176113) is between Texas Facilities Commission ("Client") and Terracon Consultants, Inc. ("Consultant") for additional or changed Services to be provided by Consultant for Client on the Project, as described in the Agreement for Services. This supplement is incorporated into and part of the Agreement for Services.

- 1. **Scope of Services.** The scope of the additional or changed Services are described in the Scope of Services section of the Consultant's Supplemental Proposal, unless Services are otherwise described below.

Terracon will provide eleven (11) additional periodic manufacturer facility site visits for 1801 Congress during the production of the curtain wall system to determine if the installation(s) are in general conformance with the construction documents, and also to address a reasonable amount of building envelope related constructability issues. Documentation will be in the format of a written field observation report presenting conditions observed by Terracon at the time of our manufacturing facility visit and our general recommendations for Terracon Client consideration. The manufacturing facility visits are limited to a 300-mile radius of Austin, Texas.

- 2. **Compensation.** Client shall pay compensation for the additional or changed Services performed at the fees stated in the Supplemental Proposal unless fees are otherwise stated below.

Original Contract Amount.....	\$956,800.00
Additional Periodic Manufacturer Facility Observations (11).....	\$28,600.00
New Contract Total.....	\$985,400.00

All terms and conditions of the **Agreement for Services** shall continue in full force and effect. This Supplement is accepted and Consultant is authorized to proceed.

Consultant: <u>Terracon Consultants, Inc.</u>	Client: <u>Texas Facilities Commission</u>
By: <u><i>Keith Simon</i></u> Date: <u>11/4/2019</u>	By: _____ Date: _____
Name/Title: <u>Keith A Simon / Senior Architect</u>	Name/Title: <u>Janie Gribble, AIA, LEED AP, CTCM</u>
Address: <u>3913 Todd Lane, Suite 505</u>	Address: <u>1711 San Jacinto Blvd.</u>
<u>Austin, TX 78744</u>	<u>Austin, Texas 78711-3047</u>
Phone: <u>(512) 800-4485</u> Fax: <u>(512) 827-3332</u>	Phone: <u>(512) 463-9456</u> Fax: _____
Email: <u>keith.simon@terracon.com</u>	Email: <u>Janie.Gribble@tfc.state.tx.us</u>

Principal, Regional Manager: Greg C. Walterscheid, MBA, FMP
Signature: *Greg Walterscheid* Date: _____

This Supplement to Agreement For Services Reference Number FW176113 is approved only to the extent any term, provision or condition herein is re-stated in, and executed under Amendment No. 1 to TFC Contract No. 18-175-000.