

**AMENDMENT NO. 1
TO THE
PROFESSIONAL ARCHITECT/ENGINEERING SERVICES
AGREEMENT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
TOM GREEN AND COMPANY ENGINEERS, 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 Tom Green and Company Engineers, Inc. (hereinafter referred to as “Architect/Engineer” or “A/E”), located at 3701 Executive Center Drive, Suite 258, Austin, Texas 78731 (hereinafter referred to collectively as the “parties”), to amend the original Professional Architectural/Engineering Services Agreement between the parties.

RECITALS

WHEREAS, on April 27, 2018, the Parties entered into that one certain *Professional Services Architectural/Engineering Services Agreement Between the Texas Facilities Commission and Tom Green and Company Engineers, Inc.* (hereinafter referred to as the “Agreement”); and

WHEREAS, on June 20, 2019, the TFC Commission approved award of this Amendment No. 1 to the Agreement for TFC’s 2018-2019 deferred maintenance for Mechanical Repairs in Capital Complex Buildings; and

WHEREAS, the Parties now desire to amend the Agreement to provide for Additional Services and Fees, and to incorporate a statutorily required provision and to modify the Workers’ Compensation and Employers’ Liability Insurance requirement;

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 agree to modify ARTICLE I – DEFINITIONS, by adding the following definition:

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

(“HUBs”).”

3. The Parties hereby agree to amend ARTICLE II – SCOPE OF SERVICES, by adding Section 2.1.10, as follows:

“2.1.10. Additional Services – Air Handler Units. Subject to Sections 2.1.4, 2.1.5, and 2.1.6, above, A/E shall provide professional engineering services for the renovation/replacement of air handling units (“AHU’s) outside AHU’s, aid distribution system and control, exterior cladding waterproofing repairs, emergency power and cooling connections and life safety systems, at the Central Services Building, the Price Daniel Building and the LBJ Annex, as more particularly set forth in A/E’s Proposal No. 118975B1 dated May 29, 2019, attached hereto and incorporated herein for all purposes as “Exhibit H-1,” supplementing the Agreement’s “Exhibit H,” for the Additional Services to be performed under this Amendment No. 1.”

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

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

3.2.2. No Liability Upon Termination. If this Agreement is terminated for any reason, TFC and the State of Texas shall not be liable to A/E for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260.”

5. The Parties hereby agree to amend ARTICLE IV – CONSIDERATION, Section 4.1, Contract Limit-Fees and Expenses, Subsection 4.1.1, Fixed Fee, to reflect an increase in the Fixed Fee in the amount of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) for the Additional Services addressed in this Amendment No. 1, so that Subsection 4.1.1 reads in its entirety, as follows:

“4.1.1. Fixed Fee. In exchange for the timely delivery of the Professional Services as specified by this Agreement, A/E shall be paid a fixed fee of Five Million Four Hundred Thirty Thousand and No/100 Dollars (\$5,430,000.00). Any Professional Services performed or delivered by A/E prior to the Effective Date of this Agreement or after its termination cannot be compensated.

6. The Parties hereby agree to amend ARTICLE V – ACKNOWLEDEMENT, COVENANTS, AND AGREEMENTS, Subsection 5.2.8 by incorporating “Exhibit F-1,” List of A/E Project Manager and Subcontractors, attached hereto, supplementing the Agreement’s “Exhibit F,” for the Additional Services to be performed under this Amendment No. 1.”

7. The Parties agree to modify ARTICLE VI – WARRANTIES AND REPRESENTATIONS BY A/E, by deleting Subsection 6.1.15, Prohibition Against Boycotting Israel, and adding Subsections 6.1.15 through and including 6.1.19, which shall read in their entirety, as follows:

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

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 A/E is on the above-referenced list the Agreement will be considered void or voidable and TFC will not be responsible to pay A/E for any work performed.

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

6.1.18. Excluded Parties. A/E 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. A/E 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.”

8. The Parties agree to modify ARTICLE X – INSURANCE, Section 10.2, Required Insurance Coverages, Subsection 10.2.1, Workers’ Compensation and Employers’ Liability Insurance, by deleting Paragraph 10.2.1.1 and replacing it with Paragraph 10.2.1.1, as follows:

“10.2.1.1. Pursuant to Texas Labor Code §406.096(b), A/E shall require each Subcontractor to certify in writing to A/E that said Subcontractor provides workers’ compensation and employers’ liability insurance for all of Subcontractor’s employees employed on this public project. In keeping with Sections 5.2.8 and 5.2.9 of Exhibit A, 2015 Uniform General Conditions, TFC 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, Section 11.2, Historically Underutilized Businesses (“HUB’s”), by adding Subsection 11.2.1, Requirement to Utilize HUB Compliance Reporting System, as follows:

“11.2.1. Requirement to Utilize HUB Compliance Reporting System. Pursuant to Texas Administrative Code, Title 34 §§ 20.85(f)(1)(2) and 20.287(b), TFC administers monthly HUB Subcontracting Plan (“HSP”) to include the Progressive Assessment Report (“PAR”) compliance monitoring through a HUB Compliance Reporting System known as B2G. A/E and A/E’s Subcontractors 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 further modify ARTICLE XI – MISCELLANEOUS PROVISIONS, by re-numbering Section 11.28, Entire Contract and Modification, as Section 11.30, and by inserting Sections 11.28 and 11.29, so that the inserted Sections and the newly-numbered Section read in their entirety, as follows:

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

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

11.30. Entire Contract 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. Except as expressly amended above, all provisions, terms and conditions of the Agreement remain in full force and effect.

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

TEXAS FACILITIES COMMISSION

TOM GREEN AND COMPANY ENGINEERS, INC.

DocuSigned by:
By: MIKE NOVAK, TFC EXECUTIVE DIRECTOR
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DocuSigned by:
By: CAMERON LABUNSKI, PE
0BF2239D7C994EE...

Mike Novak

Cameron Labunski, P.E., HFDP, HBDP,
CPMP, LEED® AP

Executive Director

Principal Engineer

Date of execution: 07/08/2019 | 5:06 PM CDT

Date of execution: 07/08/2019 | 3:48 PM CDT

G.C. NRG

Dir. [Signature]

D.E.D [Signature]

TFC Contract No. 18-171-000
Amendment No. 1
Tom Green and Company Engineers, Inc.
Project No. 18-010-5193

Exhibit F-1

List of A/E Project Manager and Subcontractors

**LIST OF A/E PROJECT MANAGER
AND
SUBCONTRACTORS**

A. Project Manager:	Cameron Labunski, P.E. Tom Green & Company Engineers, Inc. 3701 Executive Center Drive, Suite 258 Austin, TX 78731 (512) 796-7714 cameronl@tgce.com
	Jennifer Hall, P.E., CPMP Mechanical/Plumbing Task Leader
	Elaine Dolecek P.E., LEEP AP Mechanical/Plumbing Task Leader
	Art Irwin CBCP LEED AP BD +C Mechanical/Plumbing Task Leader
	Sam Hammer P.E. LC LEED AP Electrical Task Leader
B. Subcontractors:	
	1. Michelle Rossomando, AIA McKinney York Architects 1301 east seventh street Austin, Texas 78702 Office: (512) 476-0201 mross@mckinneyyork.com
	2. Dante Angelini, P.E. Structures 6926 N Lamar Blvd Austin, Texas 78752 (512) 499-0919 dante@structures.com
	3. Matthew Carlton, P.E. Wiss, Janney, Elstner Associates, Inc. 9511 N. Lake Creek Parkway Austin, Texas 78717 (512) 835-0940 mcarlton@wje.com

TFC Contract No. 18-171-000
Amendment No. 1
Tom Green and Company Engineers, Inc.
Project No. 18-010-5193

Exhibit H-1

A/E's Proposal No. 1189075B1 dated May 29, 2019

**Tom Green & Company
Engineers, Inc.**

May 29, 2019

PN 118975B1

Mr. Billy Knapp
Texas Facilities Commission
1711 San Jacinto Blvd
Austin, TX 78701

SUBJECT: TFC 18-19DM Multi-Building Deferred Maintenance Project: Proposal/Contract Scope Amendment – CSB AHUs/Chiller, PDB VAVs, LBJ Annex Cladding

Dear Billy:

We appreciate this opportunity to present our Amendment proposal for additional professional services for the subject project.

This proposal is offered to provide the additional Design and Construction Administration (CA) Services requested for the design of bid packages along with other scope items itemized below. Fees are understood to be funded through an increased Contract amount via this amendment.

A. General Scope Overview:

General scope of the A/E, common to all disciplines/consultants remain unchanged from the base project proposal/scope, except as included below:

1. Bid Package-3 Revision: PDB replacement of air distribution terminal boxes – fan powered terminals, single duct VAV terminals, fan coil units, and split system dx units - (approximately 650 VAVs) and zone controls. Completion of controls migration to current generation DDC. Removal of all remaining pneumatic controls, including pneumatically controlled smoke fire damper actuators.
2. Bid Package-4: CSB AHU Replacements and Chiller Replacement Scope
 - a. Replacement of all CSB AHUs (7-total), including preconditioning of outside air where practical; excludes Elevator Equipment Room, Data Center, and Computer Room AHUs that may exist. Replace one chiller.
3. LBJ Annex DM 16-17 Bid Package-2:
 - a. LBJ Annex Cladding Repair – Repair of granite columns scope not previously completed.
4. Future Bid Packages: Undefined – Scope of work to be determined based on the results of the supplementary assessments and the confidence of the CMR/TFC regarding the scope elements constructible within future available funds. Future packages scope is not included in the current proposal. Currently envisioned future bid package potentials include:

TFC 18-19DM Multi-Building Deferred Maintenance Project: Proposal/Contract Scope Amendment – CSB AHUs/Chillers, LBJ Annex Cladding, PDB VAVs,

- a. ARC- Provide gas fire protection system. Reconfigure HVAC to allow for archive space temperature and humidity control.
- b. CSB – Restroom renovations.
- c. INS – Replace all dual duct VAV terminal boxes and abate/replace all ductwork. Renovate all restrooms.
- d. INX – Replacement of all AHUs and OAHUs, including conversion of constant volume air distribution to variable air volume (VAV) with VAV terminal boxes. Replacement of existing HVAC controls. Replace chilled water pumps. Clean/coat/leak seal all supply/return/outside/exhaust air ductwork not replaced. Remove abandoned steam piping in tunnel. Renovate restrooms. Repair exterior cladding waterproofing.
- e. LBJ – Replace main and annex roof. Replace domestic water heater system.
- f. PDB – Replace electrical distribution panels. Renovate restrooms.
- g. REJ – Replace main chillers and chilled water pumps.
- h. SCB – Precondition outside air. Replace AHU. Replace all dual duct VAV terminal boxes. Replace chilled/heating water pumps along with heating water converter. Replace electrical MCC with switchboard. Replace courtroom dimming panels and lighting in courts.
- i. SFA – Add VFDs to chillers. Service electrical gear. Replace substation transformer in basement, along with main electrical gear.
- j. SHB – Precondition outside air. Replace AHUs. Replace all dual duct VAV terminal boxes. Replace chillers and correct flow issues. Demolish abandoned cooling tower basins. Renovate restrooms.
- k. TCC AHU Replacements and HVAC Scope - Replacement of all TCC AHUs (10-total), VAVs, OAHU, and chilled/heating water pumps along with heating water converter; excludes Elevator Equipment Room, Data Center, and Computer Room AHUs that may exist. Clean/coat/leak seal outside air ductwork.
- l. THO – Replace AHUs and terminal boxes, replace heating water boiler. Replace electrical distribution system. Replace lighting control system.
- m. WBT – Replace kitchen ventilation system. Replace main switchgear. Perform circuit tracing for entire building.
- n. WPC - Chilled water piping insulation replacement. Smoke control system fans replacement. Convert smoke dampers from pneumatic to electric. Assess and add a north entry vestibule. Replace switchgear. Replace electrical distribution panels. Replace emergency generator. Relocate switchgear vault to above grade.
- o. WPC Restroom Renovations Scope - Restroom assessments will be completed as a part of the assessment phase of the project. Design renovation of all existing

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Exhibit H-1

TFC 18-19DM Multi-Building Deferred Maintenance Project: Proposal/Contract Scope Amendment – CSB AHUs/Chillers, LBJ Annex Cladding, PDB VAVs,

restrooms on all floors (1-15) of existing multi-user restrooms above the Basement level. Fully renovate existing multi-user restrooms consistent with the programming report provided by MYA.

Contract bidding/award phase (CBA) and construction administration (CA) phase services will be consistent with the scope of work provided in the base proposal/scope.

Additionally, we recommend that an additional \$120,000 be added to the Contract for future design allocation for use at the project manager's discretion for design elements as funds become available through CMR Owner's savings.

B. Understandings of Proposal Exclusions:

Proposal exclusions remain consistent with the Base project Proposal/Scope, except as identified below.

1. Opinions of Probable Construction Costs are to be performed by CMR with review by design team members.

C. Basic and Amended Services Fee

Previous Design/CA Fees

Scope	Assess., Design, C/A Fee
Deficiency List I-A/II-A/I-B/II-B Assessment	\$600,000
WPC Terminal/Pneumatic Replacements	\$492,000
WPC AHUs	\$2,160,000
REJ Outside Air Systems	\$480,000
PDB AHUs	\$948,000
Sub-Total	\$4,680,000

Amendment No. 1 (A-1) Fees

CSB AHU/Chiller Replacements	\$360,000
LBJ Annex Column Repairs	\$60,000
PDB Terminal Replacements	\$210,000
<u>Future Design Allocation</u>	<u>\$120,000</u>
Amendment Total	\$750,000

The approximate fee breakdown by phase for Design is as follows: Schematic Design through Contract Documents - 75%; Bid Negotiation/Construction Administration - 25%.

D. Acceptance

If this proposal is acceptable to you, please provide an approval consistent with your normal procedures. Should there be any questions or requested changes, please contact me to go over them at your earliest opportunity.

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Exhibit H-1

TFC 18-19DM Multi-Building Deferred Maintenance Project: Proposal/Contract Scope Amendment – CSB AHUs/Chillers, LBJ Annex Cladding, PDB VAVs,

We appreciate this opportunity to be of continued service to you and the TFC, and look forward to continuing a successful project!

Sincerely,

A handwritten signature in black ink, appearing to read 'Cameron Labunski', written over a horizontal line.

Cameron Labunski, P.E.
Principal Engineer

Texas Firm Registration No. 2929