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# AMENDMENT NO. 1
# TO THE
# INDEFINITE DELIVERY INDEFINITE QUANTITY
# PROFESSIONAL SERVICES AGREEMENT
# BETWEEN
# THE TEXAS FACILITIES COMMISSION
# AND
# COBB, FENDLEY AND ASSOCIATES, INC.

**THIS 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 and Cobb, Fendley and Associates, Inc., located at 505 East Huntland Drive, Suite 100, Austin, Texas 78752 (hereinafter referred to as "PSP") (hereinafter collectively referred to as the "Parties") to amend the original Indefinite Delivery Indefinite Quantity Professional Services Agreement (hereinafter referred to as the "Agreement").

WHEREAS, on June 12, 2017, the Texas Facilities Commission (hereinafter, the "Commission") authorized the award of certain Indefinite Delivery Indefinite Quantity Professional Services Agreements (hereinafter referred to as "IDIQ Agreements") pursuant to Commission Policy Article III (b) regarding IDIQ Agreements; and

WHEREAS, on December 20, 2017, the Parties entered into that one certain *Indefinite Delivery Indefinite Quantity Professional Services Agreement*, TFC Contract No. 18-128-000; and

WHEREAS, subject to Agreement Section 3.1, Duration, TFC retains the right and option to unilaterally extend the Agreement upon notice to PSP for an additional two (2) year period commencing on September 1, 2019 and ending on August 31, 2021 (hereinafter referred to as the "Renewal Period"); and

WHEREAS, TFC desires to exercise that right and option through execution of this Amendment No. 1; and

WHEREAS, Commission Policy Article III (b) allows funding at the same level as the original Duration during this Renewal Period, as addressed in ARTICLE IV, Section 4.1, Subsection 4.1.1., Fees and Expenses; and

WHEREAS, the Texas Legislature in the 85th Regular Legislative Session, enacted Senate Bill 252 effective September 1, 2017, relating to prohibiting governmental contracts with a company doing business with Iran, Sudan, or a foreign terrorist organization; and

WHEREAS, TFC has also determined to modify the Agreement so that it reflects this prohibition and to make such other changes as are required by the Texas Legislature or by action of the State Auditor's Office;

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

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1. 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")."

2. The Parties agree to modify ARTICLE III – TERM AND TERMINATION, Section 3.1, Duration, by deleting the paragraph in its entirety and replacing it Section 3.1, Duration, as follows:

"3.1. Duration. This Agreement shall be effective as of the Effective Date and shall terminate on August 31, 2021, unless extended by the Parties by amendment to this Agreement or terminated earlier, as provided below. The Duration of this Agreement is comprised of two (2) separately-funded periods: (i) an Original Period commencing on the Effective Date of the Agreement and ending on August 31, 2019; and (ii) a Renewal Period, commencing September 1, 2019 and ending on August 31, 2021."

3. 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 PSP 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 PSP 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."

4. The Parties agree to modify ARTICLE VI – WARRANTIES AND REPRESENTATIONS BY PSP, by adding Sections 6.16 through and including 6.21, which shall read in their entirety as follows:

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

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6.17. Certification Concerning Restricted Employment for Former State Officers or Employees Under Government Code § 572.069. PSP 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 PSP 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.

6.18. Disaster Relief Contract Violation. Under Sections 2155.006 and 2261.053, Texas Government Code, PSP 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.

6.19. No Conflicts. PSP represents and warrants that PSP has no actual or potential conflicts of interest in providing services to the State of Texas under this Agreement and that PSP's provision of services under this Agreement would not reasonably create an appearance of impropriety.

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

6.21. Suspension and Debarment. PSP 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."

5. The Parties agree to modify ARTICLE X – INSURANCE, Section 10.01, Insurance Requirements, Subsection 10.1.1, Workers' Compensation and Employers' Liability Insurance, by deleting paragraph 10.1.1.1, in its entirety and replacing it with paragraph 10.1.1.1, as follows:

"10.1.1.1. As per Tex. Lab. Code §406.096(b), PSP shall require each Subcontractor to certify in writing to the PSP that said Subcontractor provides workers' compensation and employers' liability insurance for all of Subcontractor's employees employed on this public project. Owner shall be entitled, upon request and without expense, to receive copies of these certifications."

6. The Parties agree to modify ARTICLE XI – MISCELLANEOUS PROVISIONS, 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)(l)(2) and 20.287(b), TFC administers monthly HUB Subcontracting Plan ("HSP") to include the Progressive Assessment

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Report ("PAR") compliance monitoring through a HUB Compliance Reporting System known as B2G. PSP and PSP's Subcontractors/Subconsultants 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."

7. The Parties agree to further modify ARTICLE XI – MISCELLANEOUS PROVISIONS, by inserting Sections 11.27 through and including 11.29, and re-numbering existing Section 11.27, Entire Agreement and Modification as Section 11.30, so that the inserted and existing Sections read in their entirety, as follows:

"11.27. False Statements; Breach of Representations. By signature to this Agreement, PSP makes all the representations, warranties, guarantees, certifications and affirmations included in this Agreement. If PSP signs this Agreement with a false statement or it is subsequently determined that PSP has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Agreement, PSP shall be in default under this Agreement, and TFC may terminate or void this Agreement for cause and pursue other remedies available to TFC under this Agreement and applicable law.

11.28. Abandonment and Default. If PSP 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 PSP 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. PSP represents and warrants that neither PSP nor any firm, corporation, partnership, or institution represented by PSP, 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. PSP assigns to the State of Texas all of PSP's rights, title, and interest in and to all claims and causes of action PSP may have under the antitrust laws of Texas or the United States for overcharges associated with the Agreement.

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."

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

In Witness Whereof, the parties hereto have made and executed this Amendment No. 1 to the Agreement to be effective as of September 1, 2019.

**TEXAS FACILITIES COMMISSION**

By: DocuSigned by: Mike Novak B1C9FC0A8020417...

Mike Novak

Executive Director

Date of Execution: 04/19/2019 | 9:43 AM CDT

**COBB, FENDLEY AND ASSOCIATES, INC.**

By: DocuSigned by: Dan Warth 507D4FCB9178406...

Dan Warth, P.E.

Regional Manager, Central Texas

Date of Execution: 04/19/2019 | 6:48 AM PDT

GC

Dir

DED