

TFC Contract No. 18-196-000  
Amendment No. 2  
RFQ 303-8-01766  
HMG & Associates, Inc.

**AMENDMENT NO. 2  
TO THE  
PROFESSIONAL MECHANICAL, ELECTRICAL, AND PLUMBING ENGINEERING  
AND OTHE RELATED  
PROFESSIONAL AND TECHNICAL SERVICES  
AGREEMENT  
BETWEEN  
THE TEXAS FACILITIES COMMISSION  
AND  
HMG & ASSOCIATES, INC.**

**This Amendment No. 2** 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 **HMG & Associates, Inc.**, (hereinafter referred to as “PE”) located at 12515 Research Boulevard, Building 7, Suite 140, Austin, Texas, 78759, (collectively referred to as the “Parties”) to amend the *Professional Mechanical, Electrical and Plumbing Engineering and Other Related Professional and Technical Services Agreement between Texas Facilities Commission and HMG & Associates, Inc.* effective as of October 1, 2018 (collectively referred to as the “Agreement”), as amended.

WHEREAS, on October 1, 2018 the Parties executed that one certain *Professional Mechanical, Electrical and Plumbing Engineering and Other Related Professional and Technical Services Agreement between Texas Facilities Commission and HMG & Associates, Inc.*; and

WHEREAS, on August 31, 2020, the Parties executed Amendment No. 1 exercising TFC’s unilateral right and option to renew the contract through August 31, 2022; and

WHEREAS, on October 22, 2020, the TFC Commission awarded this Amendment No. 2 to increase the Fees to be paid to PE by Two Hundred Eighty Thousand and No/100 Dollars, (\$280,000.00) in order to fund services through August 31, 2022; and

WHEREAS, TFC has determined to include provisions, terms and conditions adopted by TFC subsequent to the execution of the Agreement in order to comply with statutory changes and requirements promulgated by the State Auditor’s Office and the Comptroller of Public Accounts;

NOW, THEREFORE, the Parties agree to the following:

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 (“PARs”). See Section 11.2.1, below.”

3. The Parties agree to modify Article III, Term and Termination, by adding Sections 3.3 and 3.4 as follows:

“3.3. 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 PE under this Agreement.

3.4. No Liability Upon Termination. If this Agreement is terminated for any reason, TFC and the State of Texas shall not be liable to PE 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 amend Article IV, Consideration, Section 4.1. Contract Limit-Fees and Expenses, Subsection 4.1.1, Fees, by deleting Subsection 4.1.1 in its entirety and replacing it as follows.

“4.1.1. Fees. In exchange for the timely delivery of Professional Services as specified in this Agreement, PE shall be paid fees and Reimbursable Expenses not to exceed the total sum of Five Hundred Twenty Thousand and No/100 Dollars (\$520,000.00). Hourly rates shall be invoiced in accordance with PE’s Schedule of Rates and Fees, a digital copy of which is incorporated herein by reference for all purposes in PDF format on the Exhibits CD, and named there in as **Exhibit D**. Any Professional Services performed or delivered by PE prior to the Effective Date of this Agreement or after its termination cannot be compensated.”

5. The Parties agree to modify Article VI, Warranties and Representations by PE, Section 6.1, Warranties and Representations By PE, by replacing Subsection 6.1.15, Prohibition Against Boycotting Israel, with Subsection 6.1.15, as follows.

“6.1.15. Entities that Boycott Israel. Pursuant to Section 2270.002 of the Texas Government Code, PE 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. PE shall state any facts that make it exempts from the boycott certification.”

6. The Parties agree to modify Article VI, Warranties and Representations by PE, Section 6.1, Warranties and Representations by PE, by adding Subsections 6.1.17 though and including 6.1.22, which shall read in their entirety as follows:

“6.1.17. Certification Concerning Restricted Employment for Former State Officers or Employees Under Government Code § 572.069. PE 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 PE 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. Disaster Relief Contract Violation. Under Sections 2155.006 and 2261.053, Texas Government Code, PE 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.

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

6.1.120. Suspension and Debarment. PE 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.

6.1.21. Human Trafficking Prohibition. Pursuant to Section 2155.0061 of the Texas Government Code, PE certifies that it is not ineligible to receive this Agreement and acknowledges that this Agreement may be terminated and payment withheld if PE's certification in this matter is inaccurate. TFC may not award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year (5) period preceding the date of the award, has been convicted of any offense related to the direct support or promotion of human trafficking.

6.1.22. Use of State Property. PE is prohibited from using State Property for any purpose other than performing services authorized under the Agreement. State Property includes, but is not limited to: TFC's office space, identification badges, TFC information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TFC issued software, and the TFC Virtual Private Network (VPN client)), and any other resources of TFC. PE shall not remove State Property from the continental United States. In addition, PE may not use any computing device to access TFC's network or e-mail while outside of the continental United States. PE shall not perform any maintenance services on State Property unless the Agreement expressly authorizes such services. During the time that State Property is in the possession of PE, PE shall be responsible for (i) all repair and replacement charges incurred by TFC that are associated with loss of State Property or damage beyond normal wear and tear; and (ii) all charges attributable to PE's use of State Property that exceeds the scope of the Agreement. PE shall fully reimburse such charges to TFC within ten (10) calendar days of PE's receipt of TFC's notice of amount due. Use of State Property for a purpose not authorized by agreement shall constitute breach of contract and may result in termination of the agreement and the pursuit of other remedies available to TFC under contract, at law, or in equity."

7. 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 in its entirety and replacing it with Paragraph 10.2.1.1 as follows.

"10.2.1.1. Pursuant to Texas Labor Code Section 4.06.096 (b), PE shall require each Subcontractor to certify in writing to the PE that said Subcontractors provides workers' compensation and employers' liability insurance for all of Subcontractor's employees employed on this public project. TFC shall be entitled, upon request and without expense, to receive copies of these Certifications."

8. The Parties agree to modify Article X, Insurance, Section 10.3, General Requirements for All Insurance, Subsection 10.3.3 Additional Policy Requirements, by deleting Paragraph 10.3.3.2 in its entirety and replacing it with Paragraph 10.3.3.2 as follows.

"10.3.3.2. 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 the Texas Facilities Commission, Attention: Insurance Specialist, P.O. Box 13047, Austin, Texas 78711, of any (i) non-renewal; (ii) cancellation; or (iii) material changes, in writing, as soon as is reasonably possible prior to any such non-renewal, cancellation or change."

9. The Parties agree to modify Article XI, Miscellaneous Provisions, Section 11.1, Indemnification, by adding the following to Subsections 11.1.1, Acts or Omissions, 11.1.2, Infringements, and 11.1.3, Taxes / Workers' Compensation / Unemployment Insurance- Including Indemnity.

**"THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE PE TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TFC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TFC OR ITS EMPLOYEES (TEX GOV'T CODE SECTION 2254.0031)."**

10. The Parties agree to modify Article XI, Miscellaneous Provisions, Section 11.1, by adding Subsection 11.1.4, as follows.

**"11.1.4. ENGINEERING AND ARCHITECTURE. PE SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO PE'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE PE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER**

**CONTRACT TO PE, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY PE WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND PE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. PE AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.”**

11. The Parties agree to modify Article XI, Miscellaneous Provisions, Section 11.2, Historically Underutilized Businesses (“HUBs”), 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 administration HSP-PAR compliance monitoring through its HUB Compliance Reporting System commonly known as B2G. PE’s and PE’s subcontractors/subconsultants shall submit required PAR information into the B2G system. Any delay in the timely submission of PAR information into the B2G system will be treated as an invoicing error subject to dispute under Tx. Gov’t Code Section 2251.042.”

12. The Parties agree to modify Article XI, Miscellaneous Provisions, 11.9, Electronic and Information Resources Accessibility Standards, by inserting Subsection 11.9.1, Cyber Security Training Required, as follows.

**“11.9.1. Cybersecurity Training Required.** If PE has “access,” as that term is defined in 1 Tex. Admin. Code § 202.1, to any state computer system or database, then, pursuant to Tex. Gov’t Code § 2054.5192, PE and its subcontractors, officers, and employees shall complete a cybersecurity training program certified under Tex. Gov’t Code §2054.519. The cybersecurity training program must be completed by the PE and its subcontractors, officers and employees during the term and any renewal period of the Agreement. PE shall verify completion of the training program to TFC pursuant to, and in accordance with, Tex. Gov’t Code § 2054.5192.”

13. The Parties agree to modify Article XI, Miscellaneous Provisions, by inserting Sections 11.28 through and including 11.30, and re-numbering existing Section 11.28, Entire Agreement and Modification, as Section 11.31, so that the inserted and existing Sections read in their entirety, as follows:

**“11.28. False Statements; Breach of Representations.** By signature to this Agreement, PE makes all the representations, warranties, guarantees, certifications and affirmations included in this Agreement. If PE signs this Agreement with a false statement or it is subsequently determined that PE has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Agreement, PE 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.

11.29. Abandonment and Default. If PE 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 PE will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work.

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

11.31. 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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HMG & Associates, Inc.

Except as amended by this Amendment No. 2, the terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have made and executed this Amendment No. 2 to be effective upon execution of both parties.

**TEXAS FACILITIES COMMISSION**

By: DocuSigned by:  
Mike Novak, Executive Director  
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Mike Novak

Executive Director

Date of execution: 12/03/2020 | 1:27 PM CST

**HMG & ASSOCIATES, INC.**

By: DocuSigned by:  
William E. Harris, Jr., P.E., President  
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William E. Harris, Jr., P.E.

President

Date of execution: 12/03/2020 | 1:25 PM CST

PM DS  
[Signature]

DGC DS  
SEH

Dir DS  
[Signature]

DED DS  
JR