

TFC Contract No.: 20-095-000
MEP Engineering, Inc.
RFQ No. 303-0-01545
Project No. 20-012-5435



**PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES
CONTRACT
FOR
ARCHITECTURAL AND ENGINEERING SERVICES
TFC 2020-2021 DEFERRED MAINTENANCE FOR HEALTH AND
HUMAN SERVICES COMMISSION MULTIPLE BUILDINGS PROJECT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
MEP ENGINEERING, INC.
PROJECT NO. 20-012-5435
TFC CONTRACT NO. 20-095-000**

PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES
AGREEMENT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
MEP ENGINEERING, INC.

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 *2015 Uniform General Conditions*, Section 1.28) and MEP Engineering, Inc. (hereinafter referred to as “A/E”), located at 1120 South Capital of Texas Highway, Building 1, Suite 150, Austin, Texas 78746, 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, Subchapter. A, to be effective as of the Effective Date (as defined below). The project for which A/E agrees to provide Professional Services is generally described as provision of a Phase I Facility Condition Assessment (“FCA”) for the TFC Fiscal Years 2020-2021 deferred maintenance, Health and Human Services Commission Multiple Buildings Project, located in Austin, Texas (hereinafter collectively referred to as the “Project”). Nothing in this Agreement shall be interpreted or construed to make A/E (as defined in *2015 Uniform General Conditions*, Section 1.16) 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 the *2015 Uniform General Conditions* (hereinafter referred to as “UGC”) and this Section 1.1. In the event of any conflict between the definitions in the UGC and in the *2018 Supplementary General Conditions to the 2015 Uniform General Conditions* (hereinafter referred to as the 2018 Supplementary General Conditions”), in the *TFC 2018 Architectural/Engineering Guidelines Edit Date March 19, 2018* (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. The *2015 Uniform General Conditions* (hereinafter referred to as “UGC”) are located at this TFC Construction Contracts website link, at 5C: <http://www.tfc.state.tx.us/divisions/facilities/prog/construct/formsindex/>, and are incorporated herein for all purposes as Exhibit A. The *2018 Supplementary General Conditions to the 2015 Uniform General Conditions* (hereinafter referred to as the “2018 Supplementary General Conditions”) are located at this TFC website link in PDF, [http://www.tfc.state.tx.us/divisions/facilities/prog/construct/formsindex/2018%20Supplementary%20Modifications%20to%20Article%205%203-23-2018%20\(003\).pdf](http://www.tfc.state.tx.us/divisions/facilities/prog/construct/formsindex/2018%20Supplementary%20Modifications%20to%20Article%205%203-23-2018%20(003).pdf), and are incorporated herein for all purposes as Exhibit B.

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 2018 Architectural/Engineering Guidelines Edit Date March 19, 2018*, (also referred to as “A/E Guidelines”). The A/E Guidelines are located at this TFC A/E Forms link, numbered 18, <http://www.tfc.state.tx.us/divisions/facilities/prog/construct/formsindex/>, and are incorporated herein for all purposes as Exhibit C.

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. *Budget* means the construction budget for the Project which is forecast to be Five Million Seven Hundred Thousand and No/100 Dollars (\$5,700,000.00) and which may be amended from time to time by TFC as further assessments, design and construction manager cost estimates are provided.

1.1.5. *Buildings* means the John H. Winters Building (“JHW”), Robert Bernstein Building (“RBB”), Robert D. Moreton Building (“RDM”), and Insurance Warehouse Building (“INW”), located at various addresses in Austin, Texas, which are the subject of this Agreement.

1.1.6. *CAD* means AutoCAD DWG format unless specifically provided otherwise herein.

1.1.7. *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.

1.1.8. *Consideration* means the funds and any and all other forms of valid, legal consideration as discussed in Article IV of this Agreement.

1.1.9. *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.

1.1.10. *Construction Documents* has the same meaning as defined in UGC, Section 1.17 that in TFC’s sole opinion are in satisfactory quality and detail.

1.1.11. *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.

1.1.12. *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.

1.1.13. *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.

1.1.14. *Effective Date* means the date that the last signature of a party is affixed hereto.

1.1.15. *Environmental Laws* means any local, state, or federal law, rule, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, as may be amended from time to time: (i) the Resource Conservation and Recovery Act of 1976 (“RCRA”) (42 U.S.C. § 6901 *et seq.*), as amended by the Used Oil Recycling Act of 1980 (Pub. L. No. 96-463, 94 Stat. 2055 (1980)), the Solid Waste Disposal Act Amendments of 1980 (Pub. L. No. 96-482, 94 Stat. 2334 (1980)), and the Hazardous and Solid Waste Amendments of 1984 (Pub. L. No. 98-616, 98 Stat. 3221 (1984)), and regulations promulgated thereunder; (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (42 U.S.C. § 9601 *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613 (1986)), and regulations promulgated thereunder; (iii) the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*); (iv) the Endangered Species Act of 1973 (15 U.S.C. § 1531 *et seq.*) and its amendments; (v) laws, statutes, ordinances, rules, regulations, orders, or determinations relating to “wetlands,” including without limitation those set forth in the Federal Water Pollution Control Act (commonly referred to as the “Clean Water Act”) (33 U.S.C. § 1251 *et seq.*); (vi) the Texas Water Code; and (vii) the Texas Solid Waste Disposal Act (Tex. Health & Safety Code Ann. §§ 361.001–361.345 (West 2018)).

1.1.16. *EPMCS* means electronic project management control system.

1.1.17. *Governmental Authorities* means all federal, state, and local governmental entities having jurisdiction over the Project, and the A/E.

1.1.18. *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 11.3, below.

1.1.19. *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.

1.1.20. *MEP Systems means mechanical, electrical, and plumbing systems.*

1.1.21. *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.

1.1.22. *Notice of Termination* means the ten (10) day advance written notice of termination that may be delivered pursuant to the terms of this Agreement.

1.1.23. *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.

1.1.24. *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.

1.1.25. *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 1.31.

1.1.26. *Pay Application* means the application for payment submitted by A/E as discussed in Article IV below.

1.1.27. *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.

1.1.28. *Person* means an individual, firm, partnership, corporation, association and any other legally recognized entity.

1.1.29. *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.

1.1.30. *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.

1.1.31. *Pre-Design Tasks* means the mobilization and pre-design services to be provided to TFC as discussed in Article II.

1.1.32. *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 Article II below.

1.1.33. *Professional Services Schedule* (hereinafter sometimes referred to as the

“Schedule”) means the schedule/timeline set out in Exhibit D, 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. At the discretion of the TFC Project Manager and as mutually agreed upon with A/E, the Professional Services Schedule may be revised and defined with more detail as the project develops. Exhibit D is attached hereto and incorporated herein for all purposes.

1.1.33.1. 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.

1.1.33.2. 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 Exhibit D.

1.1.34. *Project* means as stated above and includes each component design/construction package that may be prescribed by TFC.

1.1.35. *Project Analysis* has the same meaning as defined in Texas Government Code, Section 2166.001(5).

1.1.36. *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.

1.1.37. *Scope of Services* means the Professional Services as set out in Article II below.

1.1.38. *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.

1.1.39. *Standard of Care* means A/E’s standard of care defined in Section 6.1.4.

1.1.40. *Subcontract* means any agreements between A/E and a Subcontractor.

1.1.41. *Subcontractor* means any Person that enters into an agreement with A/E to perform any part of the Professional Services.

1.1.42. *TDLR* means the Texas Department of Licensing and Regulations.

1.1.43. *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.

1.1.44. *Using Agency* has the same meaning as defined in Texas Government Code, Section 2166.001(10).

1.1.45. *Utilities* means water, sewer, gas, electric, telecom, cable, and like services.

1.1.46. *Utility Providers* means any and all entities that TFC desires to provide Utilities to the Project.

1.1.47. *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.

II. SCOPE OF SERVICES

2.1. Scope of Services. A/E agrees to timely deliver the Professional Services described below pursuant to the Professional Services Schedule.

2.1.1. Preliminary Facility Condition Assessment (FCA) Phase. No later than the agreed Deadline, A/E shall timely deliver the following FCA Tasks to TFC.

2.1.1.1. 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.

2.1.1.2. Inspect and timely become thoroughly familiar with the Sites for the Project.

2.1.1.3. Review and become thoroughly familiar with any and all relevant and existing Project, Site, and facilities studies.

2.1.1.4. 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 enter the subsequent phases of the project that will comply with the 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.

2.1.1.5. 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.

2.1.1.6. Interface with all Utility Providers as is reasonably necessary in order to determine the necessary specifications for connecting all Utilities to the Project.

2.1.1.7. 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.

2.1.1.8. 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.

2.1.1.9. 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.

2.1.1.10. If requested, assign appropriate A/E staff to receive instruction regarding the use of the EPMCS to be utilized by TFC.

2.1.1.11. Deliver a FCA Task Report to TFC. Upon consent of TFC, A/E may deliver one (1) amendment to the FCA Task Report no later than the Pre-Design Deadline.

2.1.2. Investigation and Preliminary Report. A/E shall deliver the following investigative services and documentation in a 60% Preliminary Report Submittal as described in A/E's proposal incorporated into this contract in Section 6.1.6, below.

2.1.2.1. Review existing record drawings and as-built conditions. Review any deficiency lists available to confirm and verify extent of deferred maintenance issues.

2.1.2.2. Perform site investigations to compose deferred maintenance deficiency lists, observe changes and/or increased deterioration of deficiencies, observe related maintenance and/or deferred maintenance activities affecting deficiencies, observe additional related deficiencies.

2.1.2.3. If required, incorporate findings from TFC's asbestos testing and HVAC testing and balancing activities into report.

2.1.2.4. Develop an order of magnitude opinion of probable construction cost for each element of recommended repair / renovation with preliminary prioritization of the various aspects of repair so as to allow highest priority repairs to be implemented with available construction budget.

2.1.2.5. Collaborate with Construction Manager-at-Risk selected by TFC for project to refine cost estimates and prioritize recommendations for repair within available project budget.

2.1.2.6. Submit 60% preliminary assessment report in accordance with professional service schedule.

2.1.2.7. Meet with TFC to review submittal and receive review comments.

2.1.2.8. Address TFC review comments on the report to TFC's satisfaction.

2.1.3. Interim Submittal of 90% Complete Final Report. A/E shall deliver continued investigative services and documentation to develop the assessment report to a 90% level completion as follows.

2.1.3.1. Amend report to address TFC review comments from the 60% submittal to TFC's satisfaction.

2.1.3.2. Continue to develop the documentation of subsequent tests, results and conclusions.

2.1.3.3. Continue to develop recommendations for repair, alternatives and life cycle cost analysis of the recommended alternatives.

2.1.3.4. Continue to refine the scope and volume of necessary repairs.

2.1.3.5. Refine cost estimates for repair and prioritization towards available budget.

2.1.3.6. Continue collaboration with Construction Manager-at-Risk selected by TFC for project to refine cost estimates and prioritize recommendations for repair within available project budget.

2.1.3.7. Submit 90% final assessment report in accordance with professional services schedule.

2.1.3.8. Meet with TFC to review the submittal and receive review comments.

2.1.3.9. Address TFC review comments on the report to TFC's satisfaction.

2.1.4. Submit 100% Complete Final Report. A/E shall submit 100% Complete Final Report with reconciliation of all TFC review comments and in accordance with the Professional Services Schedule.

2.1.5. 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.

2.1.5.1. Critically review and closely scrutinize all documents submitted by all third parties.

2.1.5.2. Thoroughly review and closely scrutinize the performance, schedules, and costs of Contractor and all its subcontractors.

2.1.5.3. Critically review and evaluate Contractor's proposed schedule and costs as relevant to each consultant's discipline.

2.1.5.4. Maintain work progress and products consistent with the schedules.

2.1.5.5. Provide supplemental information beyond that presented in a submission of documents which may be reasonably requested to assist cost estimating.

2.1.5.6. Promptly communicate with pertinent parties, including topics regarding information needs and responses to needs of other parties.

2.1.5.7. 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.

2.1.5.8. 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.

2.1.5.9. 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.

2.1.5.10. 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.

2.1.6. 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.

2.1.6.1. 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.

2.1.6.2. 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.

2.1.6.3. TFC, including by and through the TFC Project Manager, reserves the right to extend any of the deadlines set out above.

2.1.7. 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. No inspections of the Project conducted by TFC 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 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 August 31, 2024, 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. 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 One Hundred Thirty-Eight Thousand and No/100 Dollars (\$138,000.00). Any Professional Services performed or delivered by A/E prior to the Effective Date of this Agreement or after its termination cannot be compensated.

4.1.2. Submission of Pay Applications or Invoices. No more frequently than once per month, A/E shall submit a Pay Application to TFC for 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. Preliminary FCA: five percent (5%)

- 4.2.2. Investigation and Preliminary Report: sixty percent (60%)
- 4.2.3. Interim 90% Submittal: ninety percent (90%)
- 4.2.4. 100% Complete Assessment Report: 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/txtravel/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. ACKNOWLEDGEMENT, COVENANTS, AND AGREEMENTS

5.1. Acknowledgement, 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.

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.

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 11.14 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 2.1 above, any deviation from which must be evidenced by the TFC Project Manager in writing.

5.2.4. A/E Safety. All A/E's and subcontractors conducting work for TFC shall abide by all OSHA rules and regulations provided by the Department of Labor, OSHA, Code of Federal Regulations, Chapter 29. Employees of A/E and subcontractors shall be trained in accordance with Chapter 29, Occupational Safety and Health Regulations. A/E and subcontractors shall inform the Contract Administrator of their Hazardous Electrical Energy Control, Lockout/Tag-out Procedure. A/E's procedure must meet or exceed TFC's procedure as determined by the Contract Administrator. Work shall not be done on energized electrical circuits, components or equipment. When de-energizing is impractical due to possible harm to personnel, equipment or facility damage, negative onsite or offsite environmental impact, or business interruption Contractor must follow OSHA requirements as detailed in OSHA Regulations 1910.331 – 1910.399.

5.2.5. 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.

5.2.6. A/E Cooperation. A/E agrees to conduct all of its services under this Agreement by and through appropriate communications with the Contract Administrator. No work, installation or other services shall be undertaken by A/E except with the prior written

direction of the Contract Administrator. A/E understands and agrees that work, installation or any other service performed without the prior written direction of the Contract Administrator is work outside the scope of this Agreement and shall be performed exclusively at A/E's risk. A/E agrees to employ competent personnel meeting the requirements outlined in the specifications, who shall be satisfactory to TFC. Personnel assigned to perform services under this Agreement may not be reassigned without the prior written approval by the Contract Administrator. TFC may request that A/E replace unsatisfactory personnel, which request shall not be unreasonably denied. A/E agrees to cooperate and coordinate its work with that of other Contractors retained by owner. Upon discovery of an apparent conflict in the sequencing of work with another Contractor, A/E shall report the concern to the Contract Administrator who will resolve the conflict.

5.2.7. E-Verify. By entering into this Agreement, A/E certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of: all persons employed to perform duties within the State of Texas, during the term of the Agreement; and all persons (including subcontractors) assigned by the A/E to perform work pursuant to the Agreement, within the United States of America. A/E shall provide, upon request of TFC and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the A/E, and A/E's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Agreement may be immediately terminated, at the discretion of TFC, and at no fault to TFC, with no prior notification. A/E shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Agreement. For persons not eligible for E-Verify screening, A/E (including sub-contractors) shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

5.2.8. Identification of Project Manager and All Subcontractors. The Project Manager identified in the initial List of A/E Project Manager and Subcontractors (hereinafter referred to as the "List"), attached hereto and incorporated herein by reference for all purposes as Exhibit E, will supervise the efforts of Contractor to timely provide TFC with the Construction Services.

5.2.8.1. The Project Manager must be committed to the Project on a full-time basis. TFC reserves the right to approve the appointment of the Project Manager and to demand that the 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 not adequate or their continued involvement with the Project will, is, or has become, detrimental to the timely and successful completion of the Project, including but not limited to, for such reasons as: (i) any past or present violation of any statute, rule, regulation or ordinance of any city, county, the State of Texas, or the United States, or any other Laws and Regulations; (ii) TFC's reasonable belief that failure to obtain an acceptable criminal background check will occur; (iii) prior unsatisfactory performance on other TFC projects; and (iv) any other like reasons.

5.2.8.2. The 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.

5.2.9. 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.

5.2.10. 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.

5.2.11. 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.

5.2.12. 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.

5.2.13. General and Criminal Background Check.

5.2.13.1. 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).

5.2.13.2. 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.

5.2.13.2.1. 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.

5.2.13.2.2. The process must be satisfactorily completed for every employee and Subcontractor before they perform services at the Site.

5.2.13.2.3. All criminal background checks must be accomplished by the Texas Department of Public Safety (hereinafter referred to as "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 *Texas Facilities Commission Criminal Background Checks and Application Guidelines*, a copy of which is attached hereto and incorporated herein for all purposes as Exhibit F. 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.

5.2.14. 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, religion, sex, national origin, age, disability, political affiliation, or religious belief. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion, or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) 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.

5.2.15. 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.

5.2.16. 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.**

5.2.17. 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, 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. Standard of Care. Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, A/E shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

6.1.5. 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.

6.1.6. 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, and (ii) conform to or exceed the specifications set forth in this Agreement.

6.1.7. Additional Warranties. In performing its Professional Services for the Project, A/E shall be bound by, and comply with, A/E's Proposal dated June 11, 2020, attached hereto and incorporated herein by reference for all purposes as Exhibit G, to the extent any warranties, representations, and/or promises of additional services are made therein, and only to that extent.

6.1.8. 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).

6.1.9. 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.

6.1.10. 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.

6.1.11. 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.

6.1.12. 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.

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

6.1.14. Financial Interest/Gifts. Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, A/E has not 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 Chapter 573 and Section 2254.032, if applicable, A/E certifies that 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 company or corporation. A/E further certifies that no partner, corporation, or unincorporated association which 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.

6.1.15. 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 the Texas Government Code, Chapter 573 and Section 2254.032. 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.

6.1.16. 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

6.1.17. Disaster Relief Contract Violation. Under Sections 2155.006 and 2261.053 of the Texas Government Code, A/E certifies that the individual or business entity named in the response or 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.

6.1.18. Excluded Parties. Contractor 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. Contractor 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. 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 exempt from the boycott certification.

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

6.1.22. Human Trafficking Prohibition. Pursuant to Section 2155.0061 of the Texas Government Code, A/E certifies that it is not ineligible to receive this agreement and acknowledges that this Agreement may be terminated and payment withheld if A/E'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.

6.1.23. Use of State Property. A/E 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. A/E shall not remove State Property from the continental United States. In addition, A/E may not use any computing device to access TFC's network or e-mail while outside of the continental United States. A/E 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 A/E, A/E 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 A/E's use of State Property that exceeds the scope of the Agreement. A/E shall fully reimburse such charges to TFC within ten (10) calendar days of A/E'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.

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 seven (7) 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 Texas Government Code, Section 2267.001, 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.

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. 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. 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. 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. 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; and (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: (i) confidential by law; (ii) marked or designated "confidential," or words to that effect, in a font size no smaller than 14 point, by A/E; or (iii) information that TFC is otherwise required to keep confidential by this Agreement.

9.6. Public Records. Notwithstanding any provisions of this Agreement to the contrary, A/E understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552. If contacted by TFC, A/E will cooperate with TFC in the production of documents responsive to the request. A/E agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. A/E may request that TFC seek an opinion from the Office of the Texas Attorney General. However, the final decision whether to seek a ruling from the Office of the Texas Attorney General will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, A/E will notify TFC's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Agreement and/or any amendment to this Agreement. This Agreement and/or any amendment to this Agreement and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. A/E agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Agreement, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, A/E is required to make any information created or exchanged with the State pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

X. INSURANCE

10.1. Insurance Requirements. All persons who enter into an agreement to provide professional services (hereinafter referred to as “Agreement”), including, but not limited to, professional engineering services and/or professional architectural services, as defined in Texas Government Code, Chapter 2254, Subchapter A (hereinafter collectively referred to as “A/E”) with the State of Texas, by and through the Texas Facilities Commission (hereinafter referred to as “TFC”), must comply with the insurance requirements established by the particular program area of TFC before the A/E is authorized to commence providing those professional services.

10.2. Required Insurance Coverages. The required insurance coverages for this particular project are as follows.

10.2.1. Workers’ Compensation and Employers’ Liability Insurance. By execution of an Agreement, A/E thereby certifies, pursuant to Texas Labor Code Section 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.

10.2.1.1. Pursuant to Texas Labor Code Section 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. In keeping with Sections 5.2.8 and 5.2.9 of Exhibit A, the 2015 Uniform General Conditions, Owner is entitled, upon request and without expense, to receive copies of Subcontractor’s written certifications.

10.2.1.2. 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.

10.2.1.3. The policy shall be endorsed to include Waiver of Subrogation in favor of TFC.

10.2.2. Commercial General Liability. Commercial general liability insurance coverage including premises; operations; blanket contractual liability coverage assumed under the Agreement 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 coverages A and B; and a general aggregate of \$2,000,000.

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

10.2.2.2. The policy shall be endorsed to include Additional Insured status in favor of TFC.

10.2.2.3. The policy shall be endorsed to include Waiver of Subrogation in favor of TFC.

10.2.2.4. The policy shall be endorsed to include thirty (30) Day Notice of Cancellation, ten (10) Days for Non-Payment of Premium, in favor of TFC.

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

10.2.3.1. No aggregate shall be permitted.

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

10.2.3.3. The policy shall be endorsed to include Additional Insured status in favor of TFC.

10.2.3.4. The policy shall be endorsed to include Waiver of Subrogation in favor of TFC.

10.2.3.5. The policy shall be endorsed to include thirty (30) Day Notice of Cancellation, ten (10) Days for Non-Payment of Premium, in favor of TFC.

10.2.4. Architect/Engineers Professional Liability Insurance.

10.2.4.1. Architect/Engineers professional liability/errors and 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.

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

10.2.4.3. The policy shall be endorsed to include thirty (30) Day Notice of Cancellation, ten (10) Days for Non-Payment of Premium, in favor of TFC.

10.2.5. Umbrella Liability Insurance. Umbrella liability insurance for a period not to expire or terminate prior to the expiration of all warranty periods, insuring Architect/Engineer for an amount of not less than \$1,000,000, which provides coverage at least as broad as, and applies in excess and follows form of, the primary liability coverages required hereinabove. The policy shall provide coverage where underlying primary insurance coverage limits are exhausted or otherwise unavailable or inadequate to cover a loss.

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

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

10.3.2. 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 the 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.

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

10.3.3.1. 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.

10.3.3.2. 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.

10.3.3.3. “Material Change” means any of the following changes to the Policy during the term of the Policy: (i) a change in the Policy period; (ii) a material revision to, or removal of, a coverage section; (iii) 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 (iv) an increase of the amount of any self-insured retention(s).

10.3.3.4. 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.

10.3.4. No Commencement of Work. A/E shall not, nor allow any Subcontractor(s) to, commence the performance of Professional Services under this Agreement until the proof of satisfaction of the insurance requirements has been received and approved by TFC. However, any approval of the proof of satisfaction of the insurance requirements by TFC shall not relieve or decrease the liability of A/E hereunder.

10.3.5. 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 renewed, and shall be written by a company with an A.M. Best rating of A- or better.

10.3.6. 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. A/E must update all expired policies prior to submission of any Application for Payment.

10.3.7. Notice of Erosion. A/E shall provide TFC with thirty (30) days written notice of erosion of any aggregate limits below the minimum amounts required by the Agreement.

10.3.8. Right to Review. TFC reserves the right to review the insurance requirements and to require deletion, revision, and/or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulations that are binding upon TFC, A/E, or the underwriter) on any such policies when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions, or the claims history of the industry and/or of A/E, provided however, such modifications must be commercially available to A/E. TFC shall make an equitable adjustment to the Contract Sum for any additional cost resulting therefrom.

10.3.9. Losses Paid by A/E. Actual losses not covered by the required insurance shall be paid by A/E.

10.3.10. Failure to Obtain, Maintain or Renew. Failure to timely obtain, maintain and/or renew the insurance policies as required may, at the sole discretion of TFC, subject A/E to, among all other available remedies, at law and in equity, the following.

10.3.10.1. Disqualification from eligibility to participate in any other or future projects with TFC.

10.3.10.2. Suspension of Work for cause.

10.3.10.3. 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: (i) make such payments; and/or (ii) acquire replacement coverage, and thereafter 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.

10.3.10.4. TFC may withhold any payments due to A/E from this Project or any other TFC project until satisfaction is achieved.

10.3.11. 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.

10.3.12. 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.

10.3.13. 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 Indemnification.

11.1.1. ACTS OR OMISSIONS. A/E SHALL INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS AND CUSTOMERS, 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 COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF A/E OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY A/E WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR 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).

11.1.2. ENGINEERING AND ARCHITECTURE. A/E 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 A/E'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE A/E OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO A/E, 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 A/E WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE

CONSTRUED TO REQUIRE VENDOR 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).

11.1.3. INFRINGEMENTS. A/E SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF A/E PURSUANT TO THIS AGREEMENT. A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. A/E SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY A/E WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. A/E SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (i) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (ii) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT A/E'S WRITTEN APPROVAL, (iii) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE A/E PURSUANT TO TFC'S SPECIFIC INSTRUCTIONS, (iv) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TFC, OR (v) ANY USE OF THE PRODUCT OR SERVICE BY TFC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT. IF A/E BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES A/E WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, A/E MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT A/E'S SOLE OPTION AND EXPENSE; (i) PROCURE FOR TFC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (ii) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TFC'S USE IS NON-INFRINGEMENT. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR 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).

11.1.4. TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY. A/E AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, A/E SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF A/E'S AND A/E'S

EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. A/E AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE SHALL NOT BE LIABLE TO THE A/E, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. A/E AGREES TO INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS AGREEMENT. A/E SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY A/E WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR 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).

11.2. Historically Underutilized Businesses ("HUBs"). In accordance with state law, it is TFC's policy to assist HUBs, 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 copy of the Approved HUB Subcontracting Plan is attached hereto and incorporated herein for all purposes as Exhibit H. When required, A/E shall submit an updated HSP. Upon TFC approval of HSP update(s), such update(s) shall become, without further notice or action, a part of the incorporated Exhibit H. A copy of the HUB Subcontracting Plan ("HSP") Form is attached hereto and incorporated herein for all purposes as Exhibit I. Prior to execution of an Amendment, an updated HSP must be approved by TFC. A/E shall provide the HUB program of TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the HSP Progress Assessment Reporting ("PAR") Form, a copy of which is attached hereto and incorporated herein for all purposes as Exhibit J.

11.3. 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. A-E's and A/E'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.

11.4. 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: (i) withholding of income taxes, FICA, or any other taxes or fees; (ii) industrial or workers' compensation insurance coverage; (iii) participation in any group insurance plans available to employees of the State of Texas; (iv) participation or contributions by the State to the State Employees Retirement System; (v) accumulation of vacation leave or sick leave; or (vi) unemployment compensation coverage provided by the State.

11.5. 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.

11.6. 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.

11.7. No Smoking. All facilities where work is to be performed are nonsmoking buildings. A/E's employees and Subcontractors are prohibited from smoking in all areas except in areas

designated for smoking.

11.8. 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
Attention: Legal Services
1711 San Jacinto Boulevard, Suite 400
Austin, Texas 78701

Copy to: Texas Facilities Commission
Attention: John S. Raff, Deputy Executive Director
1711 San Jacinto Boulevard, Suite 400
Austin, Texas 78701

If to A/E: MEP Engineering, Inc.
Attention: Joseph S. Reyes, P.E., LEED, AP
1120 South Capital of Texas Highway, Building 1, Suite 150
Austin, Texas 78746
Phone: (512) 306-9650
E-Mail: jreyes@mepengineering.com

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.

11.9. Name and Organizational Changes. A/E must provide TFC with written notification of all name changes and organizational changes relating to A/E including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change. A/E, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Agreement. If the change entails personnel changes for personnel performing the responsibilities of the Agreement for A/E, A/E shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Agreement and A/E shall supply the requested information within five (5) working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of A/E or successor entity, as applicable, to maintain its status as a party to this Agreement. TFC may terminate the Agreement due to any change to A/E that materially alters A/E’s ability to perform under the Agreement.

11.10. Electronic and Information Resources Accessibility Standards. (i) Effective September 1, 2006, all state agencies and institutions of higher education shall procure products which comply with the State of Texas accessibility requirements for electronic and information resources specified in Title 1 of the Texas Administrative Code, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. (ii) If applicable, Contractor shall provide the Texas Department of Information Resources (“DIR”) with the universal resource locator (“URL”) to its Voluntary Product Accessibility Template (“VPAT”) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<https://app.buyaccessible.gov/baw/Main.jsp>). Contractors not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

11.11. Cybersecurity Training Required. If A/E 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, A/E 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 A/E and its subcontractors, officers and employees during the term and any renewal period of the Agreement. A/E shall verify completion of the training program to TFC pursuant to, and in accordance with, Tex. Gov’t Code § 2054.5192.

11.12. 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.

11.13. 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.

11.14. 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. 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. If possible, the notice shall set forth the extent and duration thereof. 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.

11.15. Dispute Resolution. Claims, disputes, and other matters in question arising out of or relating to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institutions of legal or equitable proceedings by either party. Failure to follow the dispute resolution process below shall result in any claim filed by A/E in a court of law having jurisdiction over the claim to be summarily dismissed. Subject to Texas Government Code, Section 2260.002, 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. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code, Section 114.002 shall be governed by the following dispute resolution process:

11.15.1. Claims for Breach of Contract and Counterclaims.

11.15.1.1. A/E may make a claim against TFC for breach of a contract between TFC and A/E. TFC may assert a counterclaim against A/E.

11.15.1.2. A/E must provide written notice to TFC of a claim for breach of contract not later than one hundred eighty (180) days after the date of the event giving rise to the claim.

11.15.1.3. The notice must state with particularity: (i) the nature of the alleged breach; (ii) the amount A/E seeks as damages; and (iii) the legal theory of recovery.

11.15.1.4. TFC must assert, in a writing delivered to A/E, any counterclaim not later than the sixtieth (60th) day after the date of notice of a claim under this Section.

11.15.2. Damages. Damages may include the following.

11.15.2.1. The total amount of money recoverable on a claim for breach of contract under this Section may not, after deducting the amount specified in Section 11.15.2.2, below, exceed an amount equal to the sum of:

11.15.2.1.1. the balance due and owing on the contract price;

11.15.2.1.2. the amount or fair market value of orders or requests for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed; and

11.15.2.1.3. any delay or labor-related expense incurred by the A/E as a result of an action of or a failure to act by the unit of state government or a party acting under the supervision or control of the unit of state government.

11.15.2.2. Any amount owed the unit of state government for work not performed under a contract or in substantial compliance with its terms shall be deducted from the amount in Section 11.15.2.1 above.

11.15.2.3. Any award of damages under this Agreement may not include:

11.15.2.3.1. consequential or similar damages, except delays or labor-related expenses described by Section 11.15.2.1.3 above;

11.15.2.3.2. exemplary damages;

11.15.2.3.3. any damages based on an unjust enrichment theory;

11.15.2.3.4. attorney's fees; or

11.15.2.3.5. home office overhead.

11.15.3. Negotiation. TFC's general counsel shall examine the claim and any counterclaim and negotiate with A/E in an effort to resolve them. The negotiation must begin no later than one hundred twenty (120) days after the date the claim is received. TFC's administrative rules located at Title 1, Part 5, Section 111.31 of the Texas Administrative Code apply to this Agreement and govern the negotiation of any dispute arising from this Agreement. In the event negotiation results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the settlement to writing, and each party shall sign the settlement. A partial settlement or resolution of a claim does not waive a party's rights as to the parts of the claim that are not resolved.

11.15.4. Mediation. Before the one hundred twentieth (120th) day after the date the claim is filed with TFC and before the expiration of any extension of time mutually agreed upon, the parties shall agree to mediate a claim made under this Agreement. TFC's administrative rules located at Title 1, Part 5, Section 111.31 of the Texas Administrative Code apply to this Agreement and govern the mediation of any dispute arising from this Agreement.

11.15.5. Adjudication. A/E may adjudicate any claim in accordance with and to the extent permitted under the Texas Civil Practice and Remedies Code, Chapter 114 or the Texas Government Code, Chapter 2260 only after both parties have completed mediation of the claim in question.

11.15.6. Payment of Claims. In accordance with the Texas Civil Practice and Remedies Code, Section 114.011, TFC may pay a claim resolved under Section 11.14 only from money appropriated to it for payment of contract claims or for payment of the contract that is the subject of the claim. If money previously appropriated for payment of contract claims or payment of the contract is insufficient to pay the claim or settlement, the balance of the claim may be paid only from money appropriated by the legislature for payment of the claim. Chapter 304 of the Texas Finance Code applies to a judgment awarded to a claimant, except that the applicable rate of interest may not exceed the maximum rate allowed by applicable Laws and Regulations. Consistent with the Texas Civil Practice and Remedies Code, Section 114.011, property owned by the State or any unit of state government is not subject to seizure, attachment, garnishment, or any other creditors' remedy to satisfy a judgment on a breach of contract claim.

11.15.7. Representation of TFC. The Office of the Texas Attorney General shall defend TFC in any proceeding or adjudication conducted in conjunction with a claim brought under this Section 11.15.

11.16. 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.

11.17. 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.

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

11.19. 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.

11.20. Limitation on Adjudication Awards. 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. Pre-judgment and post-judgment interest shall be limited to the rate of three percent (3.0%) per annum. 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.

11.21. No Waiver of Sovereign Immunity. Except as may be expressly and specifically provided otherwise by Chapter 114, Texas Civil Practice and Remedies 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.

11.22. 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.

11.23. 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.

11.24. 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.

11.25. Prohibition on Certain Bids and Contracts. Under Texas Government Code, Section 2155.006, relating to the prohibition of certain bids and contracts, 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. A/E represents and warrants that during the five (5) year period preceding the date of this Agreement, A/E has not been: (i) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (ii) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

11.26. 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.

11.27. 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.

11.28. Work Made for Hire. All Work shall constitute the exclusive property of TFC. All right, title and interest in and to said Work shall automatically and without further notice or action vest in TFC upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Agreement. To the extent that title to any such Work may not, by operation of law, vest in TFC, or such Work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably and unconditionally assigned to TFC. TFC shall also have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. A/E must give TFC and/or the State of Texas, as well as any person designated by TFC and/or the State of Texas, all assistance reasonably necessary to effectuate the intent of this section and to perfect the rights and interests defined herein without any charge or expense to TFC beyond those amounts payable to A/E for the services rendered under this Agreement.

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

11.30. 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.

11.31. 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.

11.32. Schedule of Exhibits. The following shall be the exhibits to this Agreement.

- 11.32.1. Exhibit A. 2015 Uniform General Conditions.
- 11.32.2. Exhibit B. 2018 Supplementary General Conditions.
- 11.32.3. Exhibit C. TFC 2018 Architectural/Engineering Guidelines, Edit Date March 19, 2018.

- 11.32.4. Exhibit D. Professional Services Schedule.
- 11.32.5. Exhibit E. List of A/E Project Manager and Subcontractors.
- 11.32.6. Exhibit F. Criminal Background Checks and Application Guidelines.
- 11.32.7. Exhibit G. A/E's Proposal dated June 11, 2020.
- 11.32.8. Exhibit H. Approved HUB Subcontracting Plan.
- 11.32.9. Exhibit I. HUB Subcontracting Plan [Form].
- 11.32.10. Exhibit J. HUB Subcontracting Plan Progress Assessment Report [Form].

11.33. Survival of Terms. Termination of the Agreement for any reason shall not release A/E from any liability of obligation set forth in the Agreement that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution and invoice and verification.

[This Space Intentionally Left Blank]

11.34. 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

MEP ENGINEERING, INC.

DocuSigned by:
By: Mike Novak, Executive Director
BTC9FCUA8020417...

DocuSigned by:
By: Joseph S. Reyes
D607388177204B2...

Mike Novak
Executive Director

Joseph S. Reyes
Principal / Vice President

Date of Execution: 07/13/2020 | 9:01 AM CDT

Date of Execution: 07/13/2020 | 8:50 AM CDT

PM JN

GC CR

Dir MW

DED JK

Exhibit A

2015 Uniform General Conditions

The *2015 Uniform General Conditions* are located at this TFC Construction Contracts website link, at 5C:

<http://www.tfc.state.tx.us/divisions/facilities/prog/construct/formsindex/>

Exhibit B

2018 Supplementary General Conditions

The 2018 *Supplementary General Conditions to the 2015 Uniform General Conditions* are located at this TFC website link in PDF:

[http://www.tfc.state.tx.us/divisions/facilities/prog/construct/formsindex/2018%20Supplementary%20Modifications%20to%20Article%205%203-23-2018%20\(003\).pdf](http://www.tfc.state.tx.us/divisions/facilities/prog/construct/formsindex/2018%20Supplementary%20Modifications%20to%20Article%205%203-23-2018%20(003).pdf)

Exhibit C

**TFC 2018 Architectural/Engineering Guidelines, Edit Date
March 19, 2018.**

The A/E Guidelines are located at this TFC A/E Forms link, numbered 18:

<http://www.tfc.state.tx.us/divisions/facilities/prog/construct/formsindex/>

Exhibit D

Professional Services Schedule

Proposed A/E Project Schedule		
Activity Description	Task (Days)	Phase (Days)
TFC Issues Formal Notice to Proceed to A/E Team		0
Phase I - Facility Condition Assessment		112
A. Field Verifications and Existing Document Reviews by A/E Team		49
B. Develop Draft Assessment Report Document		21
• Submit Draft Assessment Report for TFC Review	70	
C. TFC/CMR Review/Comment of Draft Assessment Report		21
• MEP/CMR/TFC PM Informal Review Mtg	7	
• TFC/CMR Review and Scope Coordination Meeting	14	
D. A/E Team Reply to TFC Review Comments		7
E. Complete Final Assessment Report		14
• Issue Final Assessment Report	21	
Phase II(A) - Design		0
TOTAL PRECONSTRUCTION PHASE		112
Phase II(B) - Construction Administration		0
TOTAL CONSTRUCTION PHASE		0
TOTAL PROJECT DURATION		112

Exhibit E

List of A/E Project Manager and Subcontractors

**LIST OF A/E PROJECT MANAGER
AND
SUBCONSULTANTS
(Name, Address & Contact Person (Project Manager))**

A. Principal in Charge:	Joe S. Reyes, PE, LEED AP BD+C MEP Engineering, Inc. 1120 South Capital of Texas Highway Building 1, Suite 150 Austin, TX 78746 O: 512-306-9650 M: 512-983-3841 jreyes@mepengineering.com
Project Manager	Jon Whittaker, PE MEP Engineering, Inc. O: 512-306-9650 M: 405-306-2519 jwhittaker@mepengineering.com
Mechanical Engineer	Kevin Goetz, PE, LEED AP BD+C MEP Engineering, Inc. O: 512-306-9650 M: 512-954-4159 kgoetz@mepengineering.com
Electrical Engineer	Alexander (Sandy) Simko, PE MEP Engineering, Inc. O: 512-306-9650 M: 512-940-4576 ssimko@mepengineering.com
B. Subconsultants:	
Architecture (Fuse Architecture Studio)	Beth Guillot, AIA, LEED AP BD+C Fuse Architecture Studio 1005 East St. Elmo Rd. Building 4 Austin, TX 78745 O: 512-992-1520 beth@fuse-arch.com

Life Safety / Fire Protection Engineering (FPCG, LLC)	Gilead R. Ziemba, PE Fire Protection Consulting Group, LLC 339 Sandalwood Lane San Antonio, TX 78216 O: 210-858-2389 gilead@firepcg.com
Security/IT Consultant (Combs Consulting Group)	Brian Combs, RCDD Combs Consulting Group 4425 South Mopac, Building IV Suite 800 Austin, TX 78735 O: 512-733-6580 brian.combs@combs-group.com
Roofing/Building Envelope (Martinez Moore Engineers)	Ruben Martinez, PE, SE Martinez Moore Engineers 221 West 6 th Street Suite 800 Austin, TX 78701 O: 512-330-1278 rmartinez@martinezmooreengineers.com
Civil Engineering (Martinez Moore Engineers)	Ruben Martinez, PE, SE Martinez Moore Engineers 221 West 6 th Street Suite 800 Austin, TX 78701 O: 512-330-1278 rmartinez@martinezmooreengineers.com

Exhibit F

Criminal Background Checks and Application Guidelines

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

TEXAS FACILITIES COMMISSION
CRIMINAL BACKGROUND CHECKS AND APPLICATION
GUIDELINES

It is the policy of the Texas Facilities Commission ("TFC") that all Contractor employees and subcontractors that will complete any work 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 the Contractor. Contractor's employees and subcontractors who work on TFC contracts are required to submit a criminal history background check. A criminal history background check shall be completed before any Contractor's employee or subcontractor performs services at the site. Criminal background checks must be performed by the Texas Department of Public Safety ("DPS") and must be on the form provide by TFC.

I. CRIMINAL HISTORY CRITERIA

Employers should use the following criminal history criteria when hiring employees to perform work for TFC. Any employee failing to meet the minimum standard will be denied. If special circumstances exist, please contact the TFC representative for clarification or further consideration.

A conviction or deferred adjudication for one of the following offenses will result in the **permanent disqualification** of a person from eligibility to provide contractual services with Texas Facilities Commission:

- (i) any act causing death as defined in Texas Penal Code; and
- (ii) any felony or misdemeanor involving arson, burglary, breach of computer security, credit card abuse, counterfeiting, forgery, kidnapping, robbery, stalking, terroristic threat, theft, and any sexual offense designated as a felony in Texas Penal Code.

Additionally, anyone who has a current duty to register as a sex offender, is under indictment or is a fugitive from justice is disqualified.

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

For individuals who have a conviction or deferred adjudication for felonies not enumerated above, 10 years must have passed from the time of disposition or discharge of probation in order for that person to be eligible to provide contractual services with the TFC.

For individuals who have a misdemeanor conviction or deferred adjudication for misdemeanors not enumerated above, 5 years must have passed from the time of disposition or discharge of probation in order for that person to be eligible to provide contractual services with the TFC.

II. CRIMINAL BACKGROUND PROCESS

DPS has entered into an exclusive contract with Identogo Centers, formerly L-1 Enrollment Services, operated by MorphoTrust USA. Identogo by MorphoTrust is the exclusive live scan fingerprinting provider for DPS. All TFC contractors that are subject to TFC criminal background check requirements must create an account with Identogo in accordance with the Identogo Account Application and requirements attached hereto as "Attachment A". Thereafter, all contractor employees and subcontractors must follow the registration procedures attached hereto as "Attachment A" including using the *Texas Facilities Commission Service Code 11G6ZN*. All necessary instructions and information to schedule a fingerprint appointment is included in Attachment A. In addition, the only service code accepted by DPS for a TFC criminal background check is the service code provided in Attachment A, hereto, therefore, if an individual does not use the service code in Attachment A, he or she may be required to repeat the process at the expense of contractor. Contractors can begin the process by simply clicking on this link:

<https://uenroll.identogo.com/servicecode/11G6ZN>

Additionally, forms and instructions can be found on the Identogo website at <http://www.identogo.com> by clicking on the State of Texas. Links on that page include one for online scheduling and a list for the state-wide fingerprinting locations. The waiver form for the criminal background check is attached hereto as "Attachment B". In the event Contractor needs to set up a new account, please refer to the attached link for instructions: <http://www.l1enrollment.com/state/forms/tx/566718664f05a.pdf>.

III. CRIMINAL HISTORY ERROR RESOLUTION

The Error Resolution Unit ("ER") is responsible for updating and evaluating possible errors in criminal history records. Potential errors are reported to ER by law enforcement, judicial agencies, as well as private citizens.

If an applicant would like to make a request that a criminal history record be updated or corrected, the applicant will need to supply certified documents to the ER. Required forms and additional information submit a correction request to the ER can be found at:

http://txdps.state.tx.us/administration/crime_records/pages/errorresolution.htm.

IV. TFC CONTACTS

For any questions involving the TFC criminal background check process, please contact the following:

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

Tommy Oates, Deputy Executive Director
Office: 512-463-3057
Cell: 512-463-3376
Email: tommy.oates@tfc.state.tx.us

Mandy Burrell, Manager
Office: 512-463-1799
Cell: 512-247-1290
Email:
mandy.burrell@tfc.state.tx.us

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

ATTACHMENT A

Facilities Commission (ORI Facilities Commission/Service Code 11G6ZN)

The general process for electronic fingerprinting is:

1. Schedule an appointment to be electronically fingerprinted by MorphoTrust USA at one of their Identogo enrollment centers.
 - Internet based scheduling is the quickest and most convenient way to obtain a fingerprint appointment.
 - a. **You may begin the process now by simply clicking on this link:**
<https://uenroll.identogo.com/servicecode/11G6ZN>
 - b. Provide all required pre-enrollment data and select a convenient date and time for your appointment
 - If you prefer to schedule over the telephone, you must:
 - a. Have your Service Code ready (**11G6ZN**), then call **888.467.2080**;
 - b. MorphoTrust will prompt you for the Service Code (**11G6ZN**);
 - c. Provide all required pre-enrollment data and select a convenient date and time for your appointment
2. Arrive at your scheduled appointment with your photo identification and fee
 - If you plan on bringing a form of identification other than a valid (unexpired) TX Driver License, please refer to the Department of Public Safety's acceptable document types here: <http://www.tnrollment.com/state/forms/tx/55fc619a7f7aa.doc>
 - MorphoTrust accepts Visa/MasterCard/Discover/American Express, business checks, money orders and coupon codes (employer accounts) at the time of service.
 - Please note that personal checks and cash are **not accepted**.
3. Your fingerprints will be submitted electronically to DPS and the FBI. You will not receive a printed fingerprint card.
4. At the conclusion of your appointment, the MorphoTrust enrollment agent will provide you with an Identogo receipt stating that you were fingerprinted.
 - Do not throw away the receipt;
 - You may check status on your submission by clicking on this link:
<https://uenroll.identogo.com/servicecode/11G6ZN> and then;
 - Click "**Check Status**"

Fingerprints provided for this application shall be used to check criminal history records of the Texas Department of Public Safety and the Federal Bureau of Investigation, in accordance with applicable statutes.

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

ATTACHMENT B



IdentoGO
By MorphoTrust USA

Facilities Commission

Texas Fingerprint Service Code Form

Service Name: Facilities Commission

To schedule your ten-minute fingerprint appointment, simply visit
<https://uenroll.identogo.com> and enter the following Service Code

11G6ZN

Service Code is unique to your hiring/licensing agency. Do not use this code for another purpose.

Background Check Waiver

I certify that all information I provided in relation to this criminal history record check is true and accurate. I authorize the Texas Department of Public Safety (DPS) to access Texas and Federal criminal history record information that pertains to me and disseminate that information to the designated Authorized Agency or Qualified Entity with which I am or am seeking to be employed or to serve as a volunteer, through the DPS Fingerprint-based Applicant Clearinghouse of Texas and as authorized by Texas Government Code Chapter 411 and any other applicable state or federal statute or policy.

I authorize the Texas Department of Public Safety to submit my fingerprints and other application information to the FBI for the purpose of comparing the submitted information to available records in order to identify other information that may be pertinent to the application. I authorize the FBI to disclose potentially pertinent information to the DPS during the processing of this application and for as long hereafter as may be relevant to the activity for which this application is being submitted. I understand that the FBI may also retain my fingerprints and other applicant information in the FBI's permanent collection of fingerprints and related information, where all such data will be subject to comparisons against other submissions received by the FBI and to further disseminations by the FBI as may be authorized under the Privacy Act of 1974 (5 USC 552a). I understand my fingerprints will be searched by and against civil, criminal and latent fingerprints in the Next Generation Identification (NGI) system. I understand I am entitled to obtain a copy of any criminal history record check and challenge the accuracy and completeness of the information before a final determination is made by the Qualified Entity. I also understand the Qualified Entity may deny me access to children, the elderly, or individuals with disabilities until the criminal history record check is completed. If a need arises to challenge the FBI record response, you may contact the agency that submitted the information to the FBI, or you may send a written challenge request to the FBI's Criminal Justice Information Services (CJIS) Division at FBI CJIS Division, Attention: Correspondence Group, 1000 Custer Hollow Road, Clarksburg, WV 26306.



Don't have access to the Internet? You can still schedule an appointment by calling 888.467.2080

Exhibit G

A/E's Proposal dated June 11, 2020



AUSTIN
1120 Capital of Texas Hwy, S.
Building 1, Suite 150
Austin, Texas 78746
512 306 9650

SAN ANTONIO
9830 Colonnade Blvd
Suite 230
San Antonio, Texas 78230
210 349 1400

June 11, 2020

Jason Nezamabadi, AIA, CTCM
Senior Project Manager
Texas Facilities Commission
Facilities, Design & Construction
1711 San Jacinto Boulevard
Austin, Texas 78701

Re: **Proposal for A/E Professional Services for TFC 20-21DM HHSC Multiple Building Project (TFC Project #20-012-5435)**

Dear Mr. Nezamabadi:

MEP Engineering, Inc. appreciates the opportunity to submit this proposal for professional services on the above referenced project. As requested, this proposal has been developed for **Phase I: Facility Condition Assessment** only with a project scope of work as noted herein. It is MEP's understanding that the terms and conditions of this project assignment agreement will be defined by the standard form of TFC's Professional Architectural/Engineering Services Agreement, latest edition.

I. General Project Information

The Project consists of assessment of deferred maintenance work within the following four subject State of Texas buildings:

- **John H. Winters Building (JHW)**, 701 West 51st Street, Austin, TX 78751
- **Dr. Robert Bernstein Building (RBB)**, 1100 West 49th Street, Austin, TX 78756
- **Robert D. Moreton Building (RDM)**, 1100 West 49th Street, Austin, TX 78756
- **Insurance Warehouse Building (INW)**, 7915 Cameron Rd., Austin, TX 78754

The project scope of work includes, but is not limited to, mechanical, electrical, and plumbing systems; life safety and fire protection systems; security systems; accessibility compliance; architectural interiors and finishes; and elevator repair/renovation. Additional scope of work items requested by the TFC Project Manager include assessment of building roof areas, building surface parking areas, site paving, site drainage issues, site TAS/ADA conditions, and general site conditions.

II. Project Scope of Work

The general scope of the A/E team scope of work shall include, but not be limited to, the following:

PHASE 1 - ASSESSMENT

1. Performance of on-site investigations, review of existing building construction documents and recent building HVAC audits, State Fire Marshal's Office report (if available), and verification/validation of items in existing deficiencies list(s) requested for correction. If available, TFC will provide the A/E team with all current, updated deficiency lists available for each building.
2. Development of preliminary opinions of probable construction costs by the A/E team to accompany its recommended corrective action items.

3. Development of a list of necessary testing and inspections anticipated to be provided to the Owner by third-party consultants throughout the Assessment process, including but not limited to TAS/ADA; Commissioning; Testing, Adjusting and Balancing; Environmental; and Construction Materials testing.
4. Assistance in evaluation and interview of General Contractor/Construction Manager-at-Risk selection.
5. Assistance to the Construction Manager-at-Risk to prepare order-of-magnitude cost estimates of repairs and replacements, as recommended by the A/E team.
6. Assistance in developing priorities for adjusting scope of work to match available funding.
7. Research, evaluation, and presentation to the Owner any energy conservation strategies and alternatives for consideration, including the availability of rebates from the local utility. If rebates are available, coordination with the local utility to complete all necessary documentation.
8. Presentation of findings to the Owner for review and approval. Upon acceptance of Phase 1 Facility Condition Assessment Report findings/recommendation and authorization by Owner, proceed with Phase 2 Design Services, if directed by TFC.
9. In general, items that were previously reviewed by MEP Engineering, Inc. in the 18-19DM DSHS project for the Robert D. Moreton Building will be reexamined by the Design Team and appended and/or amended as necessary in this 20-21DM Facility Condition Assessment Report. All other buildings in this project will be assessed as new by the A/E team.

Additional detailed A/E scope of work shall include the following:

1. Actively participate in assessment phase project meetings between TFC, the CMR, and the A/E team to provide updates on report progress, solicit Owner and CMR feedback, and review recommendations for design phase scope of work. It is anticipated that assessment phase meetings will occur as noted in the attached schedule, with each meeting lasting approximately 2 to 3 hours in duration.
2. Prepare meeting agendas, meeting minutes and other similar documentation in accordance with the Agreement and customary A/E basic services responsibilities.

For the above professional services scope of work, MEP Engineering is proposing an A/E Team consisting of the following consultant team:

<u>Firm Name</u>	<u>Discipline(s)</u>
MEP Engineering, Inc.	Mechanical, Electrical, and Plumbing Systems
Fuse Architecture Studio, PLLC	Architecture
Fire Protection Consulting Group, LLC	Life Safety & Fire Protection Engineering
Combs Consulting Group	Security
Martinez Moore Engineers, LLC	Building Envelope/Roofing and Civil Engineering

Due to the broad nature of deferred maintenance items encountered in older buildings, the above list of available team consultants includes some disciplines that are not specifically noted in the RFQ scope of work. After the initial stakeholder kickoff meeting(s), the scope of the FCA review will become more clearly defined and the necessary consultant team will be finalized. Adjustments to individual consultants as a result of this effort will be reflected in an updated HUB Subcontracting Plan; however, the professional services fee will remain fixed unless otherwise approved by the TFC Project Manager.

III. Proposal Exclusions

It is MEP’s understanding that the following items are not currently requested, applicable, or expected to be provided by the design team. Should TFC determine that additional scope related to these items would be required as part of the assessment deliverables, the additional scope may be considered as additional services.

1. We exclude assessment phase services related to the following items: hazardous materials, environmental impact, data, public address systems, furniture/fixtures/equipment, plumbing fixture

- counts, extensive energy calculations/energy modeling, formal life cycle cost (LCC) analysis, zoning services, permitting, certification of roof level anchor points, testing/laboratory services.
2. We exclude the engagement of third-party service technicians in a subconsultant capacity to provide MEP with access to, and/or facilitate inspection of, existing building systems including HVAC building automation systems, elevator controls systems, and fire alarm systems. MEP includes assessment of these system in its scope, but we include no fee allowance for service technician time and materials.
 3. Unless noted otherwise, it is presumed that existing conditions within the various buildings are functional and compliant with applicable codes, such that additional design scope related to unknown existing conditions is not anticipated to be required.
 4. Development of opinion of probable construction costs (OPCC) will be performed for all recommended scope of work items identified in this assessment. OPCCs for other items not related to the recommended scope of work items are excluded in this proposal. OPCC's will be prepared by MEP Engineering's team for as part of assessment phase services.
 5. Performance of formal energy modeling is not included. Basic energy efficiency and payback comparisons involving magnitude of costs, life expectancies, and informal life-cycle cost comparisons are included. In the event that services outside of the defined scope of work are requested, MEP Engineering will consult with the TFC Project Manager to provide an explanation and mutually determine applicability.
 6. Performance of testing, adjusting and balancing (TAB) services is not included. It is MEP's understanding that, if required, a third-party TAB contractor will be contracted directly by TFC.
 7. Performance of project commissioning services is not included. It is MEP's understanding that, if required, a third-party Commissioning Authority will be contracted directly by TFC.
 8. Development of as-built floor plans and/or backgrounds for architectural, structural, and MEP systems is not included. MEP assumes that record drawings and CAD backgrounds will be provided to the A/E team by TFC (as available) and will reasonably represent the existing conditions for the various disciplines. If significant discrepancies are identified between the owner's record documents and the existing building conditions, or if record documents do not exist in any form, the A/E team will advise TFC. If requested by TFC, a separate proposal can be developed to provide for field verification and CAD documentation of existing conditions, as may be required to complete the project scope of work.

IV. Compensation

We agree to perform the Facility Condition Assessment Phase services scope of work, as described above, for a **fixed fee amount of \$138,000.**

This fee is inclusive of customary design-related expenses including document reproduction, mileage, and parking. We will invoice based on a percentage complete for the overall FCA report documents, inclusive of all buildings involved. Compensation for services shall be invoiced at the following percentages for each of the following phases.

	<u>Percent of Total Fee</u>	<u>Amount</u>
1. <u>Facilities Condition Assessment</u>	100.0%	\$ 138,000
TOTAL	100.0%	\$ 138,000

For reference, it is MEP's understanding that the TFC-budgeted Total Construction Cost (including COW, fees, GCs) for the above project scope of work is approximately \$5,700,000.

V. Additional Services

Should the project scope of work expand significantly in size and/or complexity, or if the project scope is augmented to include otherwise excluded items as listed above, MEP will bring this issue to the attention of the TFC project manager for discussion and consideration as potential additional services.

VI. Project Schedule

We propose to complete the Facility Condition Assessment (Phase I) based on the following preliminary schedule. Please note this schedule duration is an estimate and is subject to refinement based on unforeseen scope modifications, scope additions authorized by the TFC project manager.

Proposed A/E Project Schedule		
Activity Description	Task (Days)	Phase (Days)
TFC Issues Formal Notice to Proceed to A/E Team		0
Phase I - Facility Condition Assessment		112
A. Field Verifications and Existing Document Reviews by A/E Team		49
B. Develop Draft Assessment Report Document		21
• Submit Draft Assessment Report for TFC Review	70	
C. TFC/CMR Review/Comment of Draft Assessment Report		21
• MEP/CMR/TFC PM Informal Review Mtg	7	
• TFC/CMR Review and Scope Coordination Meeting	14	
D. A/E Team Reply to TFC Review Comments		7
E. Complete Final Assessment Report		14
• Issue Final Assessment Report	21	
Phase II(A) - Design		0
TOTAL PRECONSTRUCTION PHASE		112
Phase II(B) - Construction Administration		0
TOTAL CONSTRUCTION PHASE		0
TOTAL PROJECT DURATION		112

Again, thank you for this opportunity to work with Texas Facilities Commission. Please feel free to contact me at your earliest opportunity should you have any questions or require any additional information. We look forward to a successful project!

Sincerely,



Joseph S. Reyes, PE, LEED AP
Principal

Exhibit H

Approved HUB Subcontracting Plan

**Texas Facilities Commission (TFC)
HUB Program
EVALUATION OF RESPONDENT'S HUB SUBCONTRACTING PLAN (HSP)**

Instructions: This evaluation must be completed for each response before it can be considered further. Please complete a separate evaluation sheet for each response within five (5) business days after the opening date of the solicitation.

Section I:

Name of Respondent: MEP Engineering Inc

Name of Project: AE Svcs – TFC 20-21 DM HHSC Multiple Building Project- REVISION 1

Contract #: Req #303-0-01545 PO: Project: 20-012-5435

RFQ #: 303-0-00843 RFP #: IFB #:

Services AE: CMR: RC: IDIQ: Delivery Release: DRAW #: Amendment #: REVISION:

TFC HUB Coordinator has reviewed the above referenced HSP response to this solicitation and finds that the HSP:

complies with

does not comply with

applicable HUB requirements under the Texas Government Code and Texas Administrative Code. See Sections II & III for specific details.

REVISION ONLY – increase in HUB Participation during contract negotiation – increase to existing sub awards
see original HSP for CMBL verifications

The Respondent plans to meet the goal of the project which is 23.7 % (Professional Services); this meets Good Faith Effort (GFE) per TAC Rules 20.14(d)(D)(iii).

Shonte' Gordon

Print/Type Name:

Shonte' Gordon 7/7/2020

TFC HUB Coordinator/Date

Section II:

Does the respondent intend to subcontract? YES NO N/A

Instructions: If "Yes," do not proceed to the following questions. If "No," proceed to the next question.

Comments: _____

Did the respondent verify that no subcontractors would be used in the performance of the work (verification must be provided on the form prescribed in the solicitation). YES NO N/A

Section III:

Respondents who DO intend to subcontract:

YES NO

**Texas Facilities Commission (TFC)
HUB Program**

EVALUATION OF RESPONDENT'S HUB SUBCONTRACTING PLAN (HSP)

1. Did the respondent divide the work into reasonable portions, consistent with prudent industry practices (Identified the areas of subcontracting)? **YES** **NO**

Comments: _____

2. Did the respondent provide notice to HUBs of the work that the respondent intends to subcontract, in accordance with 1 T.A.C. Section 111.14? **N/A** **YES** **NO**

Comments: _____

3. Did the respondent include an executed Mentor Protégé Agreement (per Section 2161.065 Government Code), registered with TPASS? Does the HUB subcontracting plan identify the area(s) of subcontracting the protégé will perform? (Submission of a protégé as a subcontractor constitutes a good faith effort for the particular area to be subcontracted with the protégé). **YES** **NO** **N/A**

Comments: _____

4. Did the respondent provide written justification of the selection process if a non HUB subcontractor was selected by a process other than by competitive bidding, or a HUB bid was the best value responsive bidder to a competitive bid invitation, but was not selected? **YES** **NO** **N/A**

Comments: _____

5. Did the respondent provide notice to minority or women trade organizations or development centers to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants? Did the notice in all instances, include the scope of the work, specifications, and identify a contact person? Did Respondent provide notice to organizations or development centers no less than five (5) working days for construction contracts prior to submission of the response (bid, proposal, offer, or other applicable expression of interest)? **YES** **NO** **N/A**

Comments: _____



HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
 - Section 1 - Respondent and Requisition Information.
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

-- Agency Special Instructions/Additional Requirements --

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

[Empty box for Agency Special Instructions/Additional Requirements]

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: MEP Engineering, Inc. State of Texas VID #: 17427486067
 Point of Contact: Joseph S. Reyes, PE Phone #: (512) 306-9650
 E-mail Address: jreyes@mepengineering.com Fax #: n/a
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Requisition #: Proj #20-012-5435 / RFQ #303-0-01545 Bid Open Date: 06/12/20

(mm/dd/yyyy)

Enter your company's name here: MEP Engineering, Inc.Requisition #: Proj #20-012-5435 / RFQ #303-0-01545**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)

- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <u>do not</u> have a <u>continuous contract</u> * in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1	Architectural	16.30 %	%	%
2	Life Safety / Fire Protection Engineering	%	%	12.17 %
3	Security Consulting	4.06 %	%	%
4	Bldg Envelope/Roofing + Civil Engineering	14.49 %	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		34.85 %	0 %	12.17 %

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

- **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.


Enter your company's name here: <u>MEP Engineering, Inc.</u>	Requisition #: <u>Proj #20-012-5435 / RFQ #303-0-01545</u>
--	--

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

 <hr style="width: 100%;"/> Signature	Joseph S. Reyes, PE, LEED AP <hr style="width: 100%;"/> Printed Name	Principal <hr style="width: 100%;"/> Title	06/12/20 <hr style="width: 100%;"/> Date <small>(mm/dd/yyyy)</small>
---	---	---	--

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.

Exhibit I

HUB Subcontracting Plan [Form]



HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____

b. Is your company a State of Texas certified HUB? - Yes - No

c. Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- *Yes*, I will be subcontracting portions of the contract. (If *Yes*, complete Item b of this SECTION and continue to Item c of this SECTION.)
- *No*, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If *No*, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____	Requisition #: _____
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SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date <small>(mm/dd/yyyy)</small>
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Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method B (Attachment B)

Rev. 2/17

Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If *Yes*, continue to SECTION B-4.)
 - No / Not Applicable (If *No* or *Not Applicable*, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/passcblsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.
- b. List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond? <input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.
- d. List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted? <input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

Rev. 2/17

Enter your company's name here: _____	Requisition #: _____
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SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscblsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

Exhibit J

HUB Subcontracting Plan Progress Assessment Report [Form].

