

HHSC Contract Number: HHS001358700003

Project Number: 24-204-EPC



TEXAS
Health and Human Services

Professional Architectural/Engineering Services Contract

With

HKS, INC.

Project Name

**El Paso Psychiatric Center,
El Paso, TX
(Project 24-204-EPC)**

Project Delivery Method

Construction Manager-at-Risk

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ARTICLE 1. Purpose

The **State of Texas**, acting by and through the **Texas Health and Human Services Commission** (“HHSC” or “Owner”), an administrative agency within the executive branch of the State of Texas, and **HKS, Inc.** (“Architect/Engineer” or “A/E”), having its principal office at **HKS, Inc. 350 North Saint Paul Street, Suite 100, Dallas, Texas, 75201**, each a “Party” and collectively the “Parties,” enter into the following contract for professional architectural and engineering services (the “Contract”) for the **El Paso Psychiatric Center** (the “Project”).

ARTICLE 2. Duration

The Contract is effective upon the signature date of the latter of the Parties to sign (the “Effective Date”) and will expire on **August 31, 2027**, unless extended or terminated pursuant to the terms and conditions of this Contract. The term of this Contract cannot extend past **August 31, 2027**, unless extended in writing by both Parties. At the sole option of Owner, this Contract may also be extended beyond the original term as necessary to complete the mission of the solicitation or as otherwise determined by Owner to serve the best interests of the State of Texas, subject to the terms and conditions mutually agreeable to the Parties.

ARTICLE 3. Definitions

Unless the context clearly indicates otherwise, the terms have the meanings as provided in **Attachment H - Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary Conditions, Version 2.2** (“UGCs”), attached hereto and incorporated for all purposes.

Additionally, as used in this Contract, unless the context clearly indicates otherwise, the following terms have the meanings assigned below. In the event of any conflict between the definitions in the UGCs, **Attachment J - HHS Uniform Terms and Conditions - Vendor, Version 3.4**, and **Attachment D - HHSC Architectural/Engineering Guidelines** (“A/E Guidelines”), and this Contract, the definitions used in this Contract shall control to the extent of the conflict.

- 3.1 *Architect/Engineer Personnel*** means all Architect/Engineer’s staff, employees, Subcontractors, subconsultants and vendors of any tier who contract to perform any of A/E’s obligations or duties hereunder.
- 3.2 *Building Information Model or “BIM”*** means a computable multi-dimensional representation of the physical and functional characteristics of the Project facilities and their related life-cycle information, to be used as a repository of design and construction information for use by the Project Team during the design, bidding and construction phases of the Project, and for Owner’s use throughout the life-cycle of the facilities.
- 3.3 *Construction Contract or “CM Contract”*** means all the Contract Documents comprising the contract between the Owner and the Construction Manager-at-Risk (also referred to as Construction Manager or CMR or Contractor), including, as applicable, all attachments to the Construction Contract, the Owner’s solicitation, addenda, notice(s) to bidders, Construction Manager’s Guaranteed Maximum Price(s), prevailing wage schedules, list of Subcontractors, the Owner’s notice to proceed, bonds, general provisions, special provisions, Specifications, Drawings, all modifications, all written amendments, change orders, field orders, orders for minor changes in the work, and the A/E’s written interpretations and clarifications issued on or

after the Effective Date of such contract.

- 3.4 Construction Cost Limitation** means the maximum amount of funding that has been authorized by and is available to Owner to pay Construction Manager for the services and work required under the Construction Contract, including any cost of work, general conditions, construction management fees and contractor's contingency and all Change Orders. The Construction Cost Limitation may be adjusted by the Owner in its sole discretion from time to time as further assessments, and design and construction cost estimates are developed by the Project Team.
- 3.5 Contract Sum** means the total amount of all compensation payable to the Construction Manager for the Project and shall not exceed the sum total amount of the pre-construction phase Fee plus the Guaranteed Maximum Price proposal accepted by the parties, subject to adjustment for Supplemental Services or Change Orders. Any costs that exceed the Contract Sum shall be borne solely by Construction Manager without reimbursement by Owner.
- 3.6 Day** means a calendar day unless otherwise specifically stipulate.
- 3.7 Guaranteed Maximum Price or "GMP"** means the amount proposed by the Construction Manager and accepted by the Owner as the maximum cost to the Owner for construction of the Work in accordance with the Contract Documents. The GMP includes Construction Manager's construction phase fee, the General Conditions Costs, the Cost of the Work, Construction Manager's construction contingency amount, the Owner's construction contingency amount, and the Owner's special cash allowance.
- 3.8 Notice to Proceed or "NTP"** means the written authorization by Owner to proceed with commencement of Services.
- 3.9 Professional Services Schedule** - means the schedule/timeline, 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 an NTP. At the discretion of the Owner's Designated Representative ("ODR") and as mutually agreed upon with A/E, the Professional Services Schedule may be revised and defined with more detail as the project develops.
- 3.10 Project Team** means the A/E, A/E Personnel, Construction Manager, and any separate contractors, consultants, or other service providers employed by Owner for the purpose of planning, programming, design, construction, and commissioning of the Project.
- 3.11 Safety Incident** means any failure of the A/E or any of the A/E Personnel to manage performance of the A/E Personnel as necessary to recognize and successfully prevent or avoid any of the following circumstances (each being a Safety Incident):
- 3.11.1 The reported observation of a potential safety hazard, unsafe work practice, or lapse in prudent safety management that can reasonably be expected to lead to injury or death to any person, or damage to any property.
 - 3.11.2 The presence of any unsafe working condition, including without limitation any unauthorized or improper usage of equipment or faulty equipment, that reasonably be expected to lead to injury or death to any person, or damage to any property;

3.11.3 The occurrence of bodily injury or death, or property damage arising out of or in connection with the Project or the performance of any Services under the Contract.

3.12 *Schematic Design Documents* means the combination of:

- 3.12.1 conceptual drawings;
- 3.12.2 an outline summary of the areas within the proposed Project corresponding to the general categories in the space allocation outlined in the Facility Space Program;
- 3.12.3 a description of the building and general Site development that shall include an overview of proposed exterior architectural materials and structural systems together with the mechanical, electrical, and plumbing engineering systems and services being contemplated; and
- 3.12.4 an opinion of probable construction cost that demonstrates conformity with the budget, all that in Owner's sole opinion must be in satisfactory quality and detail.

3.13 *Shop Drawings* means the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Construction Manager or its agents which detail a portion of the Work.

3.14 *Work Product* shall mean all work product, including all instruments of service, submittals, Drawings, Specifications, project manuals, documents, plans, data compilations or calculations, Building Information Models, studies, reports, or other documents, and all ideas incorporated therein, and all intellectual property rights associated therewith, which are prepared by or on behalf of any service provider, in connection with the Project or in connection with the performance of the Services or Supplemental Services hereunder, which Work Product shall, except as otherwise set forth in this Contract be and remain the property of the Owner, and shall only be used by A/E in a manner strictly adhering to A/E's limited use and ownership rights as set forth in this Contract.

ARTICLE 4. Architect/Engineer's Services and Responsibilities

4.1 Description of the Project. The Owner is contracting for services that includes professional architectural and engineering services to include complete programming, design, furniture, furnishings and equipment design, and construction administration activities as needed for the Project identified in the RFQ.

The scope of these activities may include any land surveying and geotechnical reports as required by the Project. The scope of services and responsibilities required to be provided are those identified in the RFQ and any A/E's submittal, as well as the Services and responsibilities identified in this Contract.

4.2 Basic Services. The Basic Services includes all disciplines identified in **Article 18** and all related usual and customary design, consultant, and other services necessary and reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Owner's requirements and the terms of this Contract. A/E shall provide the usual and customary Basic Services necessary to complete each phase of the Project as described in **Sections 4.2 through 4.8**, along with any Supplemental Services requested by the Owner.

- 4.2.1 The Draft Facility Space Program, attached as **Attachment B**, describes the intended project scope and character along with the anticipated Project Schedule and the Preliminary Construction Cost. It is the A/E's responsibility to review, confirm and understand the requirements of the Draft Facility Space Program and to perform its professional services so as to achieve those objectives.
- 4.2.2 The Construction Cost Limitation for this Project is specified in **Article 18**. The A/E is responsible for managing the design of the Project so that its construction does not exceed the projected Construction Cost Limitation.
- 4.2.3 The Owner may require the A/E to provide services for the Project in multiple stages or parts identified as construction contract stages. Each construction contract stage shall have a unique sub-construction cost limitation. The A/E is responsible for managing the design of each construction contract stage so that its construction does not exceed the sub-construction cost limitation. The A/E is responsible for managing the design of the Project so that the sum of all sub-construction cost limitations does not exceed the Construction Cost Limitation.
- 4.2.4 The A/E shall manage the design of the Project to achieve the Facility Space Program objectives of scope and cost through completion and acceptance of the Construction Documents phase. The A/E shall advise the Owner of any adjustments to the scope or quality of the Project necessary to comply with the Construction Cost Limitation during design development as part of Basic Services.
- 4.2.5 The A/E shall submit the names of all consultants, persons, or firms, which the A/E proposes to use in the execution of its Services and shall provide the Owner with a fully executed copy of each contract or agreement that the A/E enters into with any consultant. The A/E is responsible for coordinating the Work of all of its consultants to assure that their services are appropriate for and adequately incorporated into the Work of the Project. The Owner reserves the right, in its sole discretion, to reject the employment by the A/E of any consultant for the Project to which Owner has a reasonable objection. The A/E, however, shall not be required to contract with any consultant to which it has a reasonable objection.
- 4.2.6 The A/E shall pay for its consultants' services out of its fees. The Owner is not responsible for any consultant fees or costs unless expressly agreed to in writing.
- 4.2.7 The A/E agrees to allocate Work to consultants that are Historically Underutilized Businesses ("HUBs") in accordance with HHSC's HUB opportunities program found at <https://www.hhs.texas.gov/business/contracting-hhs/historically-underutilized-business-opportunities-program>. No changes to the HUB Subcontracting Plan ("HSP") may be made unless approved in writing by the Owner. While this Contract is in effect and until the expiration of one year after final completion, the Owner may require information from the A/E, and may conduct audits, to assure that the HSP is followed. The Owner encourages the A/E to partner with certified HUBs that participate in the Texas Comptroller of Public Accounts' Mentor Protégé Program.
- 4.2.8 The A/E shall design the Project to incorporate current systems technology as

appropriate to the stated mission of the institution and the programmed functional activities. The technology shall be compatible with any existing facility and acceptable to the Owner.

- 4.2.9 The A/E, as well as its consultants, will maintain a file of the design calculations for civil, structural, mechanical, electrical, and plumbing parts of each Project, along with calculations required for determining Energy Envelope Indices including COMcheck report. Design calculations will show clearly the requirements for the selection and sizing of structure members, air conditioning and heating units, electrical circuits and equipment, lighting fixtures, and any other items requiring calculations.
- 4.2.10 Basic design services shall include incorporation of the provisions of the energy conservation design standard for new state buildings adopted by the State Energy Conservation Office (“SECO”). The A/E shall provide the Owner with a statement of compliance and associated compliance documentation as required.
- 4.2.11 The A/E shall submit an Energy and /or Water Conservation Design Standard Compliance Certification to the Owner and the SECO with the Construction Documents submission, verifying that the design complies with the requirements of ASHRAE/IESNA Standard 90.1-2013 on Projects and/or Water Conservation Design Standards where the engineering or architectural design of systems included in the construction will affect energy or water consumption. Projects must also comply with all errata sheets published by the ASHRAE Standards Committee. The A/E may alternatively use the 2015 International Energy Conservation Code as published by the International Code Council.
- 4.2.12 The A/E will consult with the Owner on Project properties and characteristics pertaining to potential energy savings and required forms. The A/E will complete the Energy and/or Water Savings Retrofit forms provided by the SECO for all required Work, including chillers, roofing, boilers, controls, windows, and related items.
- 4.2.13 The A/E, as part of Basic Services, shall assist with and attend with ODR an open meeting to be held pursuant to Texas Government Code Section 2166.403(b), to verify the economic feasibility of incorporating alternative energy devices for space heating, cooling, water heating, electrical loads, and interior lighting into the building’s design and proposed energy system. At a minimum, the A/E shall provide an economic evaluation for the potential of renewable energy applications pursuant to the legislative requirements. Guidelines are available from the SECO, Texas Comptroller of Public Accounts.
- 4.2.14 Unless otherwise directed in writing by the Owner, the A/E will be responsible for conformance with all applicable provisions of the UGCs (**Attachment H**). The A/E and his team will be responsible for conformance with all applicable requirements and provisions of the statutes, codes, and standards as identified in (i) the current A/E Guidelines (**Attachment D**); and (ii) the Comprehensive Accreditation Manual for Hospitals as published by the Joint Commission.
- 4.2.15 If federal authorities, or other state agencies require the review of any documents concerning the Project, the A/E will make necessary cooperative presentations and promptly provide any necessary information or documents for any such review. The A/E

is responsible for securing all planning permits and approvals from state agencies as may be necessary, including reviewing and responding to all agency review comments until all approvals are achieved.

- 4.2.16 Basic design services shall include incorporation of the provisions of the xeriscape landscaping design requirements as adopted by the Texas Facilities Commission for xeriscape landscaping on new construction projects, pursuant to Section 2166.404 of the Texas Government Code. The A/E shall provide site analysis and design to incorporate these provisions. A summary of the project requirements meeting these guidelines shall also be provided for the design development submittal package.
- 4.2.17 The A/E, as part of Basic Services, shall engage a recognized and specialized construction cost estimating consultant service acceptable to the Owner to prepare detailed construction cost estimates of the Project in a form acceptable to the Owner following the Construction Specifications Institute (“CSI”) format. Updated estimates shall be included with the plans and specifications submitted for review at completion of the schematic design phase, design development phase, and at the stages of completion of the Construction Documents required in **Article 18**. If the construction cost estimate exceeds the Construction Cost Limitation at any time, the Owner will determine whether to increase the Construction Cost Limitation or require the A/E to revise the Project scope or quality to comply with the Construction Cost Limitation at no supplemental cost to Owner. Reductions in Project scope or quality are subject to Owner’s review and approval. If the construction cost estimate is below the Construction Cost Limitation, the Owner and the A/E shall mutually agree on changes to the project scope or the Construction Cost Limitation.
- 4.2.18 The A/E shall submit documents to the Owner for review at completion of the due diligence of the existing conditions, programming, schematic design and design development phases, and at the stages of completion of the Construction Documents as described in **Article 18**. The Draftsman/Engineer shall incorporate into the documents such corrections and amendments as the Owner requests, unless the A/E objects in writing and receives the Owner’s consent not to make the changes. The A/E will be responsible for any damages incurred by the Owner that are caused by the A/E’s failure to incorporate requested corrections and amendments to the documents.
- 4.2.19 The A/E shall provide a review and comment form acceptable to the Owner for Owner’s use during document review. Owner will provide its review comments to A/E on the form, and the A/E shall provide a detailed written response to each of the Owner’s review comments indicating where and how they have been addressed in the design documents. At each required document submittal stage, the A/E shall include the completed comment form from the preceding submittal along with a cover letter signed by a firm principal affirming that the previous review comments have been fully addressed in the current submittal. Failure to respond to the previous comments or to provide the written affirmation may result in reduction or rejection of the A/E’s then current A/E voucher. Owner’s approval of the revised drawing shall not be deemed to be an approval of any unlisted changes, and any costs or expense for any A/E’s Supplemental Services subsequently incurred for such unlisted changes shall be borne or reimbursed by the A/E.
- 4.2.20 Standard of Care. A/E will perform, or cause to be performed, all Services and

undertakings of A/E hereunder expeditiously, and in no event later than is required to conform to the Estimated Project Milestones Schedule, **Attachment C**, and shall do so with that degree of professional skill and care practiced, and in accordance with industry standards customarily adhered to, by other firms practicing in the same or similar locality experienced in the performance of services and undertakings of the same or similar nature for other projects of comparable value. A/E shall employ and exercise the professional judgment of its experienced and qualified professionals to provide Owner confidence that the Project will be completed in conformity with Owner's requirements. All A/E Personnel performing Services under this Contract shall at all times be under A/E's exclusive direction and control and A/E shall be responsible for proper supervision and examination of the performance of the Services by A/E Personnel consistent with the requirements of this Contract. A/E Personnel assigned to the Projects shall possess sufficient skills and professional expertise as required to satisfactorily meet all obligations and requirements of this Contract.

- 4.2.21 The A/E, as part of Basic Services, shall become sufficiently familiar with the existing facilities, systems and conditions at the Project location so that the proposed Project will completely and properly interface functionally with them in compliance with the Standard of Care pursuant to Section 130.0021 of the Texas Civil Practice and Remedies Code.
- 4.2.22 The A/E agrees and acknowledges that Owner is entering into this Contract in reliance on A/E's represented professional abilities with respect to performing A/E's Services, duties, and obligations under this Contract. The A/E shall perform its Services (i) with the professional skill and care ordinarily provided by competent architects practicing in the same or similar locality and under the same or similar circumstances and professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect; and (iii) in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. There are no obligations, commitments, or impediments of any kind known to the A/E that will limit or prevent performance by the A/E of its services. The A/E hereby agrees to correct, at its own cost, any of its Services, and the services of its consultants, that do not meet the Standard of Care.
- 4.2.23 The A/E shall take reasonable precautions to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to the A/E (by Owner or any other party) that the A/E uses for the Project. The A/E shall identify to the Owner in writing any such documents or data which, in the A/E's professional opinion, are unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. Owner does not warrant for the accuracy or suitability of such documents or data as are furnished unless the A/E advises Owner in writing that in the A/E's professional opinion such documents or data are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes the A/E to proceed in accordance with the documents or data as originally given.
- 4.2.24 The A/E's services shall be reasonably accurate and free from any material errors or omissions. Neither acceptance nor approval of the A/E's services by the Owner shall

relieve the A/E of any of its professional duties or release it from any liability, it being understood that Owner is, at all times, relying upon the A/E for its skill and knowledge in performing A/E's services. Owner shall have the right to reject any of A/E's services because of any fault or defect in the Project due to any material errors or omissions in the plans, drawings, specifications, and other materials prepared by the A/E or its consultants. Upon notice of any such errors or omissions, the A/E shall promptly provide any and all services necessary to correct or remedy them at no additional cost to the Owner. The owner understands and acknowledges that although the instruments of service shall be prepared within the Standard of Care of this Contract, the Contractor may require additional information from the A/E to clarify, correct, supplement, and coordinate the design intent shown in the Construction Documents that result in increases in the Construction Cost.

- 4.2.25 The A/E shall not proceed to any phase of design not expressly authorized by the Owner.
- 4.2.26 The A/E agrees to furnish efficient business administration and superintendence and to use the A/E's best efforts to design the Project in an expeditious and economical manner consistent with the interest of Owner and A/E's professional skill and care.
- 4.2.27 The A/E shall allocate adequate time, personnel and resources as necessary to perform its services. The A/E's senior principal(s) responsible for managing the Project is identified in **Attachment F** and shall not be changed without the prior written approval of the Owner. The day-to-day Project Team will be led by the senior principal(s) unless otherwise directed by Owner or prevented by factors beyond the control of the A/E. The senior principal(s) shall act on behalf of the A/E with respect to all phases of the A/E's Services and shall be available as required for the benefit of the Project and the Owner.
- 4.2.28 The A/E shall make reasonable efforts to investigate any documents provided; and Architect/ Engineer shall conduct site visits to determine the visible existing conditions at the Project Site to identify existing systems and construction which must be modified to accommodate the A/E's design for the Project and the construction of the Project. The A/E shall identify to the Owner any discrepancies between the documents and visible conditions and shall consult with the Owner on any special measures, services or further investigations required for the A/E to perform its services free from material errors and omissions and to properly coordinate with existing systems and construction. This investigation shall be accomplished by registered, professional architects and engineers, as appropriate.
- 4.2.29 The A/E, when requested by the Owner, shall coordinate the purchase of additional reprographic materials for bidding or proposal purposes or when additional review sets, in excess of those required by **Section 4.6.7**, is required by the Owner. The A/E shall present a tax exemption certificate to the vendor and coordinate the Owner's requirements for type, quantity and invoice billing. When requested, the A/E will account to the Owner for all additional materials ordered by the Owner through the A/E as the Owner's agent and shall distinguish between those materials ordered on behalf of the Owner without sales tax and any other copies thereof that A/E, or others, may order and pay for which includes sales tax, on its own or their behalf. The A/E shall forward to the Owner the original vendor's invoice for materials purchased by the Owner and delivered to the A/E as the Owner's agent.

- 4.2.30 When the Project is subject to Texas Commission on Environmental Quality or other state agency regulations, the A/E shall coordinate all related design efforts, including those of the civil engineer and landscape architect, so that consideration of site design and best management practices are integrated.
- 4.2.31 All persons who enter into an agreement to provide professional services, including, but not limited to, professional engineering services and/or professional architectural services, as defined in Chapter 2254, Subchapter A, of the Texas Government Code, with the State of Texas, by and through Owner, must comply with the insurance requirements established hereunder before A/E is authorized to commence providing such professional services.
- 4.2.32 **RESERVED** – See **Attachment I, A/E Insurance Requirements for Project 24-204-EPC, New 50 Non Maximum-Security Unit Beds at El Paso , TX**
- 4.2.33 The Owner has or intends to appoint a Construction Manager for this Project, and the A/E shall coordinate its Services as outlined in this Contract (Basic and Supplemental) hereunder with the Construction Manager. The Owner may direct the A/E to recognize the Construction Manager as its representative for the performance of various duties hereunder which are otherwise defined as the responsibility of the Owner hereunder. A/E hereby acknowledges such appointment. Upon request, A/E shall be entitled to review a redacted version of the contract between the Owner and the Construction Manager for this project (the “CM Contract”). Nothing in the CM Contract shall confer direct responsibility on the Construction Manager for the A/E’s Services, nor shall anything contained therein diminish A/E’s responsibility for its services as set forth hereunder.
- 4.2.34 The A/E shall assist the Owner in the development and review of the Construction Manager’s Guaranteed Maximum Price (“GMP”) proposal. The GMP proposal will include the qualifications, assumptions, exclusions, and value engineering. Following Owner’s approval of the GMP proposal, the A/E shall be responsible for developing the Construction Documents, consisting of plans and Specifications. Furthermore, the A/E shall participate in the documentation of the Construction Manager’s GMP proposal so as to adequately understand the contents of the proposal and ultimately confirm that the Construction Documents, when complete, reflect all qualifications, clarifications, and assumptions contained within the GMP proposal. The A/E and the Construction Manager shall jointly provide a monthly status report stating the progress of the incorporation of the GMP qualifications, clarifications, assumptions, exclusions and value engineering, into the Construction Documents.
- 4.3 Pre-Design Phase.** No later than the pre-design deadline, A/E shall timely complete or deliver the following pre-design tasks to Owner:
- 4.3.1 **Due Diligence.** A/E will perform due diligence of the existing conditions and provide facilities infrastructure/site assessment report and confirmation of the provided Draft Facility Space Program, **Attachment B**.
- 4.3.2 A/E will review Owner’s Estimated Project Milestones Schedule (**Attachment C**) and submit revisions to the draft Project Milestone Schedule to Owner for review and

approval.

- 4.3.3 **Programming Services.** Before proceeding into the schematic design phase, the A/E will conduct Programming services as defined by the American Institute of Architects (“AIA”) to establish Project goals, collect information, collect and analyze facts, identify and test concepts, determine needs, and establish design criteria, all utilizing a programming method that is acceptable to the Owner. The A/E will prepare a written report documenting the findings, including but not limited to diagrams, relationship studies, cost estimates, and size requirements. The A/E will conduct on-site interviews and investigations to collect all needed information, attend a review meeting, submit a final report, and obtain the Owner’s written approval. A draft space allocation and sizing plan for each room and/or functional area will be provided by the Owner and must be confirmed by the A/E during Programming.
- 4.3.4 Review and become thoroughly familiar with the Construction Cost Limitation proposed by Owner and advise Owner if, in the opinion of A/E, the Construction Cost Limitation 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 Construction Cost Limitation is adequate, A/E shall confirm in writing its ability to prepare the Schematic Design Documents that will comply with the Facility Space Program parameters and the Construction Cost Limitation. If, however, in the opinion of A/E, the Construction Cost Limitation proposed by Owner 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 Construction Cost Limitation. If such efforts should fail, Owner, at its option, may (i) waive the provisions of this subsection; or (ii) terminate this Contract. The Parties acknowledge and agree that subsequent changes in the Facility Space Program or scope of the Project may be cause to modify and/or amend the Construction Cost Limitation. Any such modification or amendment to the Construction Cost Limitation must be authorized by Owner in writing.
- 4.3.5 Confirm all codes, rules, regulations, and all other related requirements identified by the A/E.
- 4.3.6 Determine and identify to Owner which additional Subcontractors, if any, that are not yet engaged, or to be engaged, by A/E pursuant to this Contract, will be necessary to complement the professional services to fulfill requirements of this Contract, if any such Subcontractors have not been identified by A/E in **Attachment F**.

4.4 Schematic Design Phase

- 4.4.1 Based on the mutually agreed upon approved Facility Space Program, Construction Cost Limitation, and the Project Schedule, the A/E shall submit Schematic Design Documents in accordance with A/E Guidelines (**Attachment D**) and any Supplemental Services set forth in **Article 18**. The A/E shall review alternative approaches to design and construction for the Project and the Schematic Design Documents as they are being prepared at intervals appropriate to the progress of the Project with the Owner and Construction Manager at the Project location or other location specified by the Owner within the State of Texas. The A/E shall provide the Construction Manager with copies of the A/E’s documents at the Construction Manager’s expense to assist the Construction

Manager in fulfilling its responsibilities to the Owner.

- 4.4.2 The A/E will make inspections as needed to determine existing construction and infrastructure, including drainage, site utilities, mechanical, plumbing and electrical features, and to verify equipment capacity, location and sizes. A/E will provide the required data on the Project documents without supplemental charges to the Owner. A/E will review the architectural background and site utility drawings provided by the Owner and advise the Owner of substantial discrepancies. Minor discrepancies are considered normal variations and will be incorporated into the backgrounds as field verifications.
- 4.4.3 The A/E shall provide all services necessary to perform the services of this phase as outlined in this Contract (preparation of Schematic Design Documents).
- 4.4.4 The A/E shall work closely with Owner in preparation of schematic drawings and shall specifically conform to Owner's requirements regarding aesthetic design issues.
- 4.4.5 The A/E shall furnish and deliver to the Owner the number of complete printed sets of Schematic Design Documents as enumerated in **Article 18**.
- 4.4.6 The A/E shall direct the preparation of a detailed construction cost estimate to confirm compliance with the Construction Cost Limitation and include it with the completed Schematic Design Documents. The A/E shall review its construction cost estimate in comparison with the construction cost estimate prepared by the Construction Manager and shall reconcile any differences between the two construction cost estimates in coordination with the Construction Manager. If the A/E is unable to reconcile all differences between the two construction cost estimates with the Construction Manager, then the A/E shall provide a detailed explanation of the differences to the Owner.
- 4.4.7 The A/E shall participate in a final review of the Schematic Design Documents with the Owner and Construction Manager at the Project location or other location specified by Owner in the State of Texas. Prior to the Owner's approval of the Schematic Design Documents, the A/E shall incorporate such changes as are necessary to satisfy the Owner's review comments, any of which may be appealed for good cause.
- 4.4.8 The A/E shall take all reasonable steps as necessary to secure approvals of preliminary building designs, including the comprehensive design plans, from the Texas State Preservation Board, Partnership Advisory Committee, Joint Oversight Committee on Government Facilities, and state leadership as established in the master plan encompassing all buildings on the campus.
- 4.4.9 The A/E shall determine compliance with any substitute or "or-equivalent" materials and equipment proposed by service providers.
- 4.4.10 As requested by the Construction Manager, the A/E shall assist the Construction Manager in evaluating any service providers' value engineering proposals.
- 4.4.11 Before proceeding into the design development phase, the A/E shall obtain Owner's written acceptance of the Schematic Design Documents and approval of the A/E's preliminary construction cost estimate and schedule.

4.5 Design Development Phase

- 4.5.1 Upon receipt of the Notice to Proceed from Owner and no later than the design development deadline, A/E shall prepare and deliver the design development phase documents to Owner for review and approval.
- 4.5.2 It is acknowledged and agreed that A/E may continue to develop the drawings at the risk of being required to make changes until a design development approval is delivered to the A/E by Owner.
- 4.5.3 A/E shall proceed to the Construction Document phase once review comments and project cost estimates for the design development phase are reconciled, and Owner delivers a Notice to Proceed with Construction Documents.
- 4.5.4 All design development documents must comply with all laws and regulations of all governmental authorities.
- 4.5.5 A/E shall submit all documents required by the Texas Department of Licensing and Regulation (“TDLR”), as Owner’s authorized agent, and obtain TDLR’s determination of whether the Project is designed in compliance with applicable requirements of TDLR. A/E shall immediately deliver a copy of any determination of compliance or noncompliance by TDLR to Owner.
- 4.5.6 A/E shall proceed to develop the Construction Documents once review comments and project cost estimates for design development are reconciled and Owner delivers a Notice to Proceed with development of the Construction Documents.
- 4.5.7 Based on the approved Schematic Design Documents and any adjustments to the Draft Facility Space Program or Construction Cost Limitation authorized by the Owner, the A/E shall prepare, for review and approval by the Owner and Construction Manager, design development documents in accordance with Owner’s written requirements to further define and finalize the size and character of the Project in accordance with Supplemental Services set forth in **Article 18**. The A/E shall review the design development documents as they are being prepared at intervals appropriate to the progress of the Project with the Owner and Construction Manager at the Project location or other location specified by Owner in the State of Texas at intervals identified in the revised Project Milestone Schedule submitted by the A/E as described in this Article. The A/E shall provide the Construction Manager with copies of the A/E’s documents at the Construction Manager’s expense to assist the Construction Manager in fulfilling its responsibilities to the Owner.
- 4.5.8 The A/E shall furnish and deliver to the Owner the number of complete printed sets of design development documents as enumerated in **Article 18**.
- 4.5.9 The A/E shall direct the preparation of a detailed construction cost estimate to confirm compliance with the Construction Cost Limitation and include it with the completed design development documents. The A/E shall review the design development documents as they are being prepared at intervals appropriate to the progress of the

Project with the Owner and Construction Manager at the Project location or other location specified by Owner in the State of Texas at intervals identified in the Project Milestone Schedule submitted by the A/E as described in this Article. The A/E shall provide the Construction Manager with copies of the A/E's documents at the Construction Manager's expense to assist the Construction Manager in fulfilling its responsibilities to the Owner.

- 4.5.10 Before proceeding into the Construction Document phase, the A/E shall obtain Owner's written acceptance of the design development documents and approval of the mutually established Construction Cost Limitation and schedule.
- 4.5.11 The A/E shall prepare presentation materials at completion of design development and, if so requested, shall present the materials to the Owner or their leadership at a regularly scheduled meeting held within the State.
- 4.5.12 The A/E shall prepare preliminary recommended furniture layouts for all spaces where it is deemed important to substantiate the fulfillment of program space requirements, or to coordinate with specific architectural, mechanical and electrical elements.
- 4.5.13 The A/E will provide an evaluation of energy conservation alternative designs for a Project.

4.6 Construction Documents Phase

- 4.6.1 Based on the approved design development documents and any further adjustments in the scope or quality of the Project or in the Project Construction Cost Limitation authorized by the Owner, the A/E shall prepare, for approval by the Owner and review by the Construction Manager, early release construction documents consisting of Drawings and Specifications in accordance with Owner's written requirements setting forth in detail the requirements for construction of the Project, including, without limitation, any Supplemental Services contained in **Article 18**. The owner reserves the right to authorize additional early release packages.
- 4.6.2 The plans, Drawings and Specifications for the entire Project shall be prepared so that the construction of the building and related facilities, including built-in permanent fixtures and equipment will cost no more than the Construction Cost Limitation established by Owner. The A/E will be responsible for managing the design to stay within such Construction Cost Limitation as outlined in **Article 18**. The A/E shall review the Construction Documents as they are being prepared at intervals identified in the Estimated Project Milestones Schedule (**Attachment C**), with the Owner and Construction Manager at the Project location or other location specified by Owner in the State of Texas. The A/E shall provide the Construction Manager with copies of the A/E's documents at the Construction Manager's expense to assist the Construction Manager in fulfilling its responsibilities to the Owner.
- 4.6.3 The A/E shall advise the Owner on matters such as construction phasing and scheduling, bid or proposal alternates, special cash allowances, liquidated damages, the construction contract time period, and other construction issues appropriate for the Project. The A/E shall assist the Owner and Construction Manager in the preparation of the necessary

bidding information, bidding forms, pricing information, and pricing forms, and the conditions of the Construction Contract.

- 4.6.4 The A/E shall assist the Owner in connection with the Owner's responsibility and procedures for obtaining approval of all Authorities Having Jurisdiction ("AHJ") over the Project.
- 4.6.5 The A/E shall ensure coordination and inclusion of sequence of operations for all operable systems in the facility.
- 4.6.6 The A/E, at the A/E's expense, at each stage of review described in **Article 18**, shall furnish and deliver to the Owner the number of complete printed copies of all plans, Drawings and Specifications of every character made or furnished in connection with the Work, which copies shall become the property of the Owner. The A/E shall incorporate into the plans, Drawings and Specifications such changes as are necessary to satisfy the Owner's written review comments or published project meeting minutes.
- 4.6.7 The A/E shall pay for the reproduction of all plans, Specifications and other documents for use by the A/E and its consultants and all documents reproduced for the various completion stage reviews, as set forth in **Article 18**, by the Owner prior to the reproduction of bidding or proposal documents. All other reproduction costs shall be borne by the Owner, provided that all invoices for such reproduction Work are billed directly to the Owner, free of state sales taxes, and identified by the A/E as to the project name, number and institution. However, Addenda issued after the bid documents are reproduced, except for changes generated by Owner, shall be supplied at the A/E's expense.
- 4.6.8 The A/E shall participate in a final review of the Construction Documents with the Owner and Construction Manager at the Project location or other location specified by Owner in the State of Texas at intervals identified in **Attachment C** (Estimated Project Milestones Schedule) as outlined in this Article. Prior to the Owner's approval of the Construction Documents, the A/E shall incorporate such changes as are necessary to satisfy the Owner's review comments.
- 4.6.9 Before proceeding into the bidding and proposal phase, the A/E shall obtain Owner's written acceptance of the Construction Documents and approval of the mutually established Final Construction Cost Limitation.
- 4.6.10 At fifty percent (50%) completion of Construction Documents, or such other time as Owner may specify to the A/E, at Owner's sole option and discretion, the Construction Manager will furnish the A/E with a Guaranteed Maximum Price proposal based upon the 50% Construction Documents prepared by the A/E and approved by the Owner. The A/E shall assist the Owner and further advocate the Owner's interests in Owner's negotiations with the Construction Manager in an effort to develop a Guaranteed Maximum Price proposal acceptable to Owner, in Owner's sole option and discretion. If the Owner does not accept the Construction Manager's Guaranteed Maximum Price proposal, the A/E shall participate with the Owner and Construction Manager in constructability reviews and shall revise the documents as necessary in order to reach an agreement. If Construction Manager's Guaranteed Maximum Price proposal exceeds the

cost quantity survey furnished to Owner by A/E, and Owner directs A/E to revise the documents, then A/E shall revise the documents at its own expense so that the Guaranteed Maximum Price proposal for constructing the Project shall not exceed the Owner's Construction Cost Limitation and any previously approved construction cost estimate. If it is determined to be in the Owner's best interest, instead of requiring the A/E to revise the drawings and specifications, the Owner reserves the right to accept a Guaranteed Maximum Price proposal that exceeds the stipulated Construction Cost Limitation. The A/E shall analyze the final Guaranteed Maximum Price proposal document, together with its supporting assumptions, clarifications, and contingencies, and shall submit a detailed written analysis of the document to the Owner. Such analysis shall include, without limitation, reference to and explanation of any inaccurate or improper assumptions and clarifications.

- 4.6.11 After the Guaranteed Maximum Price has been accepted, the A/E shall incorporate into the Construction Documents any revisions which are necessary due to inaccurate assumptions and clarifications made in the development of the Guaranteed Maximum Price.
- 4.6.12 A/E shall proceed to develop the 95% Construction Documents once review comments and project cost estimates for the 50% Construction Documents are reconciled and Owner delivers a Notice to Proceed with development of the 95% Construction Documents.
- 4.6.13 A/E shall prepare and deliver the 95% Construction Documents to Owner for review and approval no later than the scheduled deadline.
- 4.6.14 A/E shall proceed to develop the 100% Construction Documents once review comments and project cost estimates for the 95% Construction Documents are reconciled and Owner delivers a Notice to Proceed with development of the 100% Construction Documents.
- 4.6.15 A/E shall prepare and deliver to Owner the proposed 100% complete Construction Documents no later than the scheduled deadline.
- 4.6.16 The construction of the Project may be divided into different project stages each with different dates for implementation and completion under separate Guaranteed Maximum Price contract amendments or separate contracts, which require A/E's issuance of multiple design packages.
- 4.6.17 A/E shall sign, seal and date, and shall cause the responsible architect(s) and engineer(s) to sign, seal and date, all documents, reports, Drawings and Specifications issued to Owner pursuant to the terms of this Contract and in accordance with applicable laws and regulations. With the signing and sealing of the Construction Documents the A/E shall accept complete responsibility for these documents.
- 4.6.18 The Contract Deliverables issued by A/E must comply with all laws and regulations.
 - 4.6.18.1 All Drawings and Specifications must, in conspicuous text, expressly prohibit any electrical systems or equipment from being energized or otherwise

activated without a minimum of twenty-four (24) hour advance notice to Owner.

4.6.18.2 A/E shall submit all documents required to secure approval of all governmental authorities. All requests for reimbursement for any direct costs associated with submitting documents to such authorities and for permit fees shall be governed by **Section 8.2.1** of this Contract.

4.6.18.3 No Construction Documents shall be issued, delivered, or released for any purpose without the prior written consent of Owner.

4.7 Contract Bidding, Proposal, and Award Phase. Upon receipt of an applicable written authorization to proceed, and only in such event, A/E shall prepare and deliver to Owner the following contract bidding and award phase services for the Project:

4.7.1 Unless otherwise instructed by Owner, A/E shall deliver four (4) sets of the approved Construction Documents to Owner, any additional copies of which shall be considered a reimbursable expense.

4.7.1.1 Throughout the course of design and construction of the Project, A/E shall provide Owner with continuous access to the BIM and shall transfer each BIM to Owner's server at substantial completion of the Project. At completion of 100% Construction Documents, A/E shall provide Computer-Aided Design and Drafting ("CADD") files for Owner's review. At completion of each Project stage, A/E shall provide CADD for the record Drawings to Owner.

4.7.1.2 Assist Owner in the bidding and award phase by delivering the following services:

4.7.1.2.1 Prepare any addenda, amendments, and the like, to the solicitation documents which may become necessary;

4.7.1.2.2 Attend all pre-bid meetings conducted by Construction Manager;

4.7.1.2.3 Consult with and advise Owner and Construction Manager as to any bidder inquiries;

4.7.1.2.4 Attend and participate in the evaluation of all proposals in accordance with Owner processes and procedures, including, but not necessarily limited to, interviewing of bidders, which participation shall be at no additional cost to Owner and shall not constitute a Supplement Service.

4.7.1.3 If the lowest acceptable GMP, as determined by Owner in its absolute and sole discretion, exceeds the Construction Cost Limitation and Owner does not amend the Construction Cost Limitation, A/E shall consult with Owner and Construction Manager, in order to identify further potential design and/or Specification modifications which could result in obtaining a proposal price that would be in compliance with the Construction Cost Limitation. Approved modifications shall be incorporated into the Construction Documents and

appropriate copies reissued at no cost to Owner.

4.7.1.4 In the event A/E receives any inquiries whatsoever from bidders or potential bidders regarding the Project, A/E must immediately refer such inquiries to Construction Manager and Owner. A/E is not authorized to provide any comments, answers or other similar responses to such inquiries. All inquiries must be immediately forwarded to Construction Manager for response.

4.7.2 In conjunction with the development of the Guaranteed Maximum Price and at other times as appropriate to the Project, the A/E shall assist the Owner and Construction Manager by issuing bid and solicitation documents, and accounting for bid and solicitation documents issued; receiving and resolving questions about bid and solicitation documents; preparing addenda, issuing addenda, and accounting for addenda issued; attending pre-bid and pre-proposal conferences and HUB meetings. At intervals identified in the Estimated Project Milestones Schedule (**Attachment C**), the A/E shall answer inquiries from bidders and proposers at Owner's request and shall prepare and issue any necessary addenda to the bidding or proposal documents. The A/E shall investigate the responsibility of apparent low bidders or proposers and inform Owner in writing of its findings and recommendations. For proposers selected by qualifications and by competitive sealed proposals, the A/E shall investigate qualifications and other pertinent proposal information and inform the Owner in writing of its findings and recommendations.

4.7.3 In the event the best value proposal received for the Project exceeds the Final Construction Cost Limitation established at the completion of the Construction Document phase, the A/E, without charge to the Owner, and if so, directed by Owner, shall revise the Drawings and Specifications as necessary to bring the cost of the Project within the Final Construction Cost Limitation. The Owner reserves the right to accept a proposal and award a construction contract that exceeds the Final Construction Cost Limitation, if such award is determined by Owner to be in the Owner's best interest.

4.8 Construction Phase- Administration of the Construction Contract. A/E shall deliver the following management and administration of construction contract(s) services to Owner during the construction phase of the Project as is specified in the UGCs (**Attachment H**) and as follows:

4.8.1 The construction phase shall commence with the acceptance of the Construction Manager's Guaranteed Maximum Price (or acceptance of a partial Guaranteed Maximum Price for a stage or phase) award of the contract for construction and issuance of (i) a notice to commence on-site work or (ii) a Notice to Proceed with construction services or (iii) a Notice to Proceed with demolition and abatement and terminate after Final Payment to the Contractor is made and close out documents are received.

4.8.2 The A/E shall provide administration of the Construction Contract as set forth below.

4.8.2.1 The A/E shall coordinate with the Contractor to establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records at each Owner's monthly meeting and when requested. The A/E shall manage and execute all Change Orders.

- 4.8.2.2 The A/E shall chair all meetings scheduled by the Owner or the A/E and shall promptly provide summary notes to all parties. The A/E shall attend Contractor's regularly scheduled planning meetings when requested.
- 4.8.3 The A/E shall assist the Owner in making arrangements for pre- construction conferences and shall assist in preparation of an administration booklet for the pre-construction conference and shall distribute copies of the bound booklet to all attendees. The A/E and its consultants shall participate in the project pre-construction process.
- 4.8.4 The A/E shall review the Contractor's list of proposed Subcontractors for the Work, initial administrative submittals for project schedule, schedule of values, submittal schedule, and equipment matrix to establish appropriate bases for construction monitoring, payment processing, and system commissioning. The A/E shall identify necessary revisions to the documents in writing to the Contractor and recommend acceptance of the documents by the Owner when appropriate. The A/E shall review periodic updates of all schedules with Owner and Contractor to evaluate appropriateness.
- 4.8.5 The A/E and its consultants shall prepare appropriate materials for and conduct a pre-construction Conference at the Site prior to commencement of construction by the Contractor.
- 4.8.6 The A/E shall be a representative of the Owner during the Construction phase, and shall advise and consult with the Owner. Instructions to the Contractor shall be forwarded through the A/E and all communication by and with the A/E's consultants shall be through the A/E, except that the Owner reserves the right to communicate directly with the Construction Manager and consultants as it deems necessary or appropriate at any time. The A/E shall have authority to act on behalf of the Owner to the extent provided in the Contract Documents. Duties, responsibilities, and limitations of authority of the A/E shall not be restricted, modified or extended without written acceptance of the Owner.
- 4.8.7 The A/E shall visit the Site at least once each week or on a mutually agreed upon schedule during the entire construction period to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. Each of the A/E's consultants shall visit the Site at least once each week or as required during construction activities related to the consultant's discipline to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. The A/E and its consultants shall submit written reports within ten (10) days of their site visits and meetings. The A/E shall not be required to make exhaustive or continuous on-site visits to inspect the quality or quantity of the Work.
- 4.8.7.1 On the basis of the on-site observations, the A/E shall keep the Owner informed of the progress and quality of the Work and shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. The A/E shall notify Owner and the Contractor in writing of any portions of the Work which A/E has observed as not being in conformity with deficiencies or defects. The A/E shall make its site representative available and shall consult with Owner and the Contractor on the occasion of all circumstances arising during the course of construction which would make such consultation in Owner's interests.

- 4.8.7.2 In addition to site visits for general inspection and observation, the A/E and its consultants shall visit the Site for specific purposes related to certification of progress payments, start-up, or mock-up reviews for significant Work activities and for formal inspections of the Work. The A/E and its consultants shall provide written reports of all site visits to the Owner spacing.
- 4.8.8 The A/E shall prepare an agenda for and conduct monthly job conferences for attendance by representatives of the Contractor, major Subcontractors, the A/E and the Owner, and prepare and distribute minutes of the meetings.
- 4.8.9 The A/E shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.
- 4.8.10 The A/E shall at all times have access to the Work wherever it is in preparation or progress.
- 4.8.11 The A/E shall determine the amounts owing to the Contractor based on observations of Work placed at the Site and on evaluations of the Contractor's Application for Payment and shall coordinate its review and evaluation with the ODR and shall certify Contractor's Application for Payment in an appropriate amount.
- 4.8.12 The certification of a Contractor's Application for Payment shall constitute a representation by the A/E to the Owner, based on the A/E's observations at the Site and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the A/E's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Contractor's Application for Payment); and that the Contractor is entitled to payment in the amount certified. However, the approval of a Contractor's Application for Payment shall not be a representation that the A/E has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Sum.
- 4.8.13 The A/E shall be the interpreter of the technical requirements of the Contract Documents and the judge of the performance of the Work of the Contractor. The A/E shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written recommendations within a reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.
- 4.8.14 Interpretations and recommendations of the A/E shall be consistent with the intent of and

reasonably inferable from the Contract Documents and shall be in written or graphic form.

- 4.8.15 Subject to approval of the Owner, the A/E's decisions in matters relating to artistic effect shall be final if consistent with and reasonably inferable from the intent of the Contract Documents.
- 4.8.16 The A/E shall have the responsibility and the authority, with appropriate notification to the parties, to reject Work which does not conform to the Contract Documents. Whenever, in the A/E's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the A/E will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work will then be fabricated, installed or completed. The A/E shall review construction materials testing and any special testing required and shall provide recommendations for retesting, actions, or any appropriate corrective measures as may be necessary or appropriate based on the results of such tests.
- 4.8.17 The A/E and its consultants shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, product data and Samples, but only for conformance with the design concept of the Work set forth in the Contract Documents and shall respond to Contractor's inquiries and questions and provide supplemental information as appropriate. Action on submittals shall be taken with reasonable promptness so as to cause no delay to the Contractor's scheduled progress, but in any event no more than fourteen (14) days after receipt. The A/E's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The A/E's review shall not constitute approval of any construction means or methods.
- 4.8.18 The A/E shall clarify and interpret the intent and scope of the Construction Documents and, if necessary or appropriate, issue supplemental documents to amplify or explain portions of the Construction Documents.
- 4.8.19 The A/E shall provide assistance in the review of the Contractor's requests for Change Orders or claims for Supplemental time or costs and make recommendations to Owner as to such requests or claims.
- 4.8.20 The A/E shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents. In conjunction with each change, the A/E shall prepare an independent cost and time estimate for comparison with the Contractor's proposal and recommend to the Owner whether the proposal is acceptable.
- 4.8.21 The A/E shall prepare revised Contract Drawings, where appropriate, to illustrate and document the Work required by approved Change Orders. All proposed changes to Drawings, plans, and Specifications, regardless of how initiated, shall be totally defined in the document depicting them as to Scope of Work added, removed, or changed. The original copies of the Construction Documents may be revised to show such changes,

provided that all such revisions shall be separately recorded on the media acceptable to Owner, including, without limitation, CADD. Such revisions shall be clearly indicated, and a current revision date shall be included on the reproducible copy. Changes to the specifications shall be made by consecutively numbered and dated addenda. All changes to design documents or Specifications will be identified with date of change, revision number and other customary identification references. Areas changed on Drawings will be “clouded” to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.

- 4.8.22 A/E and its consultants shall conduct and participate in concealed space observations, systems start-up observations, systems integration/operational demonstrations, Substantial Completion or pre-final work observations to determine the dates of Substantial Completion, and final work observation. In association with each observation, A/E and its consultants shall prepare a list of items which A/E and its consultants have observed as deficiencies in the Work, requiring remedial work or replacement, assemble and distribute the official Punchlist to all affected parties, and thereafter review the corrected and/or replaced Work and assist in verification of correction of all items.
- 4.8.23 A/E shall review, for conformance with the Contract Documents, Contractor’s submission of guarantees and warranties.
- 4.8.24 The A/E and its consultants shall assist the Owner in checking as-built drawings during the course of the Work in association with certifying progress payments and shall review as-built documents for completeness and compliance with Contract requirements at Substantial Completion and at Final Completion of the Project.
- 4.8.25 A/E shall receive and review Contractor’s submission of record drawings, operating and maintenance instructions, and all manuals, brochures, drawings, and other close-out documentation furnished by the Contractor, shall require necessary revisions to same, and when acceptable under the terms of the Contract between Owner and Contractor, shall forward to Owner. The A/E shall certify Final Payment to the Contractor when the requirements of the Contract between Owner and Contractor have been met.
- 4.8.26 A/E shall monitor the Contractor’s schedule for the construction phase Work and assist the Owner in reviewing all relevant activities and advise the Owner of the Contractor’s scheduled progress.
- 4.8.27 A/E shall provide a milestone schedule that is acceptable to the Owner and shall be submitted on a monthly basis prior to submission of construction payment application, in conformance with the project milestone schedule, so that the desired development and construction schedule for the Project shall be maintained.
- 4.8.28 The A/E shall be available after Final Payment to advise the Owner regarding warranty items and to inspect warranty work during the warranty period. A/E shall participate in the Project’s one year warranty review.
- 4.8.29 Subject to the provisions of the UGCs (**Attachment H**), no later than the Substantial Completion inspection, A/E shall conduct a Substantial Completion inspection of the Work, while accompanied by the ODR, the A/E, and the Construction Manager, to

determine whether said portion of the Work has achieved Substantial Completion.

4.8.29.1 In the event Owner and the A/E conclude that the Work, or any portion thereof, has not been performed or completed in accordance with the Construction Documents, A/E shall prepare and deliver, no later than Substantial Completion inspection Punchlist deadline, a Substantial Completion inspection Punchlist to Construction Manager with a copy to Owner.

4.8.29.1.1 A/E shall continue to perform the foregoing described service until Owner can issue an appropriate Certificate of Substantial Completion.

4.8.29.1.2 In the event that such continued service is required due to causes outside A/E's direct control (including, but not limited to, Construction Manager's errors in reporting readiness of the work for inspection; Construction Manager prematurely requesting Substantial Completion inspection; significant deficiencies in the Work; unexcused delays in the Work; untested or improper performance of systems; or similar failures performed by Construction Manager or its agents), such service shall constitute a Supplemental Service.

4.8.29.2 In the event A/E and Owner conclude that the Work, or a discrete and identified phase thereof, has been performed or completed in accordance with the Construction Documents so as to be determined to be substantially complete, Owner shall promptly issue an appropriate Certificate of Substantial Completion as to the completed Work, as provided in the UGCs (**Attachment H**), and A/E shall promptly take all such steps as are required by TDLR, as Owner's authorized agent, to ensure the Project is completed in compliance with applicable requirements of TDLR including, but not limited to, obtaining a passing inspection by A/E's Registered Accessibility Specialist. Any provision in the foregoing to the contrary notwithstanding, A/E shall not recommend the issuance of a Certificate of Substantial Completion if, in its reasonable opinion, A/E determines that any of the items to be contained in the Substantial Completion inspection Punchlist cannot or, in all reasonable likelihood will not be, satisfactorily completed within thirty (30) days of the date of the Substantial Completion inspection deadline.

4.8.30 Subject to the provisions of the UGCs (**Attachment H**), and no later than the final inspection, A/E shall conduct a final inspection of the Work, while accompanied by the ODR, the A/E, and Construction Manager, to determine whether all of the Work for the entire Project has been fully completed in accordance with the Construction Documents.

4.8.30.1 In the event Owner, and the A/E conclude that any of the punch list items have not been corrected or completed in accordance with the Construction Documents, A/E shall prepare and deliver, no later than the final inspection Punchlist deadline, a final inspection Punchlist to Construction Manager with a copy to Owner.

- 4.8.30.1.1 A/E shall continue to perform the foregoing described service until Owner can issue a Certificate of Final Completion.
- 4.8.30.1.2 In the event that such continued service is required due to causes outside A/E's direct control (such as, Construction Manager's errors in reporting readiness of the Work for inspection; Construction Manager prematurely requesting Substantial Completion inspection; significant deficiencies in the Work; unexcused delays in the Work; untested or improper performance of systems or similar failures performed by Construction Manager or its agents), such service shall constitute a Supplemental Service.
- 4.8.30.2 In the event A/E, and Owner conclude that all of the Work, or all of the Work in a respective discrete or identified phase, has been corrected or completed in accordance with the Construction Documents, and subject to the prior issuance of a Certificate of Substantial Completion, Owner, with A/E signature as appropriate, shall issue and deliver a Certificate of Final Completion to Construction Manager.
 - 4.8.30.2.1 Issuance of a Certificate of Substantial Completion is a condition precedent to Construction Manager's right to issue notice that the Work will be ready for final inspection.
 - 4.8.30.2.2 Issuance of a Certificate of Final Completion is a condition precedent to Construction Manager's right to receive Final Payment.
- 4.8.31 No later than the Close-out and Record Documents deadline, and prior to A/E's delivery of the Application for Final Payment to Owner, A/E shall:
 - 4.8.31.1 Obtain, review, and inspect all Close-out Documents, guarantees, bonds and all other fiscal surety instruments, and all other documentation required of Construction Manager by the Contract Documents to ensure full and complete compliance. Within five (5) days of such confirmation, A/E shall transmit the above-described documentation to Owner.
 - 4.8.31.2 Furnish the Record Documents to Owner.
 - 4.8.31.3 Furnish one (1) digital copy of all Construction Documents to Owner including the BIM and annotation files used to create the Construction Documents, in the format and version approved by Owner.
 - 4.8.31.3.1 Each portable drive or disk shall be appropriately labeled to include identification of the software program (and version thereof) utilized.
 - 4.8.31.3.2 Drawings shall be annotation files referencing the BIM and shall be organized within the layering system in accordance with the A/E Guidelines (**Attachment D**).

4.8.31.3.3 Layer format and names shall be in accordance with the A/E Guidelines (**Attachment D**).

4.8.31.3.4 All electronic data shall include an organized indexing system and/or a table of contents sufficiently detailed as to each discrete subject matter so as to allow for easy identification and location of each file or page of information.

4.8.32 Subject to the restrictions set out below, at such time that the Certificate of Final Completion has been issued, A/E shall promptly review and, if in proper form, approve the Application for Final Payment in accordance with the UGCs (**Attachment H**) and the Construction Documents.

4.8.32.1 In order for an Application for Final Payment to be considered complete and subject to approval, Construction Manager must submit a fully executed Final Payment checklist in such form as is prescribed by Owner.

4.8.32.2 No approval of an Application for Final Payment is valid and enforceable unless and until the foregoing subsection is fully satisfied.

4.8.33 In the event of any material conflict between the duties and responsibilities of A/E as set out in the UGCs (**Attachment H**), A/E Guidelines (**Attachment D**), or in any other document referenced herein and incorporated for all purposes, and this Contract, the duties and responsibilities specified in this Contract shall control to the extent of such material conflict.

4.9 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 Owner.

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

4.9.2 Thoroughly review and closely scrutinize the performance, schedules, and costs of Construction Manager and all its Subcontractors.

4.9.3 Critically review and evaluate Construction Manager's proposed schedule and costs as relevant to each consultant's discipline.

4.9.4 Maintain work progress and products consistent with the schedules.

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

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

4.9.7 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.

4.9.8 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 Owner.

- 4.9.9 Answer questions and provide clarifications for Construction Manager 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.
- 4.9.10 Ensure that A/E's project manager, and any other representative of A/E whose presence is requested by Owner attend all meetings and participate in all conference calls that are scheduled by Owner.
- 4.9.11 Comply with all requirements of the UGCs (**Attachment H**) and the A/E Guidelines (**Attachment D**).
- 4.10 Release of Electronic Files.** A/E shall, as a part of its Services, provide or cause to be provided to Construction Manager and its Subcontractors, upon Construction Manager's request, electronic access to such BIM data and electronic files comprising the Construction Documents as is reasonably necessary and appropriate to enable their use of such data and files in connection with the Project. A/E shall provide such access in an executed Acknowledgement of Data Use Protocols form to be provided by Owner or by an architect that is approved by the Owner. Such Drawing Files or Building Models shall not be relied upon for construction and shall not be used as a substitute for paper instruments of Service issued for Construction.
- 4.11 Owner Approvals.** Any provisions in this Contract to the contrary notwithstanding, all consents and/or approvals by Owner shall be in its sole and absolute discretion and must be in writing.
- 4.11.1 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 Contract.
- 4.11.2 A/E is not authorized to commence providing any professional services to the Owner with respect to the Project unless and until an appropriate Notice to Proceed is delivered by Owner.
- 4.11.3 Owner, including by and through the ODR, reserves the right to extend any of the deadlines set out above.
- 4.12 Inspections.** Owner hereby reserves the right, if deemed appropriate by the Owner in its sole discretion, to conduct reviews or inspections during the course of design development, construction and commissioning of the Project, and to require A/E to participate therein. However, such participation shall not relieve A/E of any of its obligations arising pursuant to this Contract. No inspections of the Project conducted by the Owner shall reduce the level or extent of A/E's responsibilities arising pursuant to this Contract. Neither the approval and/or final acceptance of a Project or any Deliverables, the payment of any Pay Application by the Owner shall constitute, nor be deemed, a release of A/E's obligation to perform and timely deliver the professional services and any Supplemental Services in accordance with the Standard of Care pursuant to the terms of this Contract. Owner anticipates engaging other independent professionals to provide peer reviews at the conclusion of the design development and Construction Documents phases for each design package issued by A/E. A/E shall incorporate modifications to its design documents in connection with any peer review without additional

cost to Owner.

4.13 Supplemental Services

4.13.1 Supplemental Services are those services which shall be provided if authorized or confirmed in writing by the Owner and for which compensation will be provided as described in this Contract in addition to compensation for Basic Services.

Prior to commencing any Supplemental Service, A/E shall prepare for acceptance by the Owner a Supplemental Services Proposal Form attached hereto as **Attachment G**, or other format as directed by Owner, which shall describe in detail the nature or scope of the Supplemental Services, the basis upon which A/E has determined that such services are Supplemental Services, and which shall set forth the maximum amount of fees and reimbursable expenses for which A/E is prepared to perform such Supplemental Services, together with a proposed schedule for the performance of such Supplemental Service. Those services which the Owner contemplates to be provided as Supplemental Services, or considered to be Supplemental Services, are described in **Article 18**. A/E shall proceed only after written acceptance by Owner of the Supplemental Services Proposal.

4.13.2 Upon acceptance by Owner, each Supplemental Services Proposal and the services performed by A/E pursuant to such Supplemental Services Proposal shall become part of this Contract and shall be subject to all terms and conditions of this Contract, as fully and completely as though the same had been included in this Contract as a Basic Service at the original execution of this Contract.

4.13.3 Providing services to make detailed investigations of existing conditions or facilities or to make measured drawings of them is a Supplemental Service except as reasonably necessary to verify the accuracy and completeness of drawings or other information furnished by the Owner and to the extent necessary for the A/E to complete its responsibilities hereunder free of material errors and omissions. A/E shall not be required to perform any destructive testing or to hire the services of a surveyor unless agreed to as a Supplemental Service.

4.14 Time

4.14.1 Time is of the essence in this Contract. A/E shall perform all of A/E's Services described herein as expeditiously as is consistent with (i) A/E's best professional efforts, skill and care, (ii) the orderly progress of such services, and (iii) in conformance with the project milestone schedules so that the desired development and construction schedule for the Project shall be maintained. A/E shall at all times provide sufficient personnel to accomplish A/E's Services within the time limits set forth in the schedules described herein.

4.14.2 **Attachment C**, attached hereto, contains an Estimated Project Milestones Schedule for completion of each of the phases of services to be performed by A/E pursuant to this Contract. Supplemental activities shown on the schedule, and any associated dates not yet defined, shall be determined at the completion of the program phase or at such time when both Parties mutually agree that the Project is sufficiently developed and

documented. Changes in this schedule may be made only with the written approval of Owner. A/E shall perform all of its Services in accordance with the then-current schedule approved by Owner.

ARTICLE 5. Owner's Responsibilities

- 5.1** The Owner will provide a Draft Facility Space Program attached hereto as **Attachment B**, or the Owner and A/E may agree that A/E shall prepare a Facility Space Program as a Supplemental Service as set forth in Section 18.2 of this Contract. The Draft Facility Space Program will set forth the Owner's description of the Project scope, schedule, criteria for design objectives, characteristics and constraints, space requirements and relationships, Site requirements, existing facilities, and desired special components, systems, and equipment.
- 5.2** The Owner will provide a preliminary project budget and schedule for the Project. The budget will include the Construction Cost Limitation, contingencies for bidding and changes in the Work during construction, and other costs which are the responsibility of the Owner. The Estimated Project Milestones Schedule attached hereto as **Attachment C**, will set forth the Owner's plan for milestone dates and completion of the Project.
- 5.3** The Owner designates the ODR as its representative authorized to act in the Owner's behalf with respect to the Project. The ODR shall examine the documents submitted by the A/E and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the A/E's services. The Owner shall have the right to withhold from payments due A/E such sums as the Owner deems reasonably necessary to protect Owner against any loss or damage which may result from negligence by A/E or failure of A/E to perform A/E's obligations under this Contract pending final resolution of such claims.
- 5.4** The Owner shall arrange and pay for structural, mechanical, chemical, and other laboratory tests as necessary during construction except as required of the Contractor in the Contract Documents.
- 5.5** The Owner shall furnish all legal, accounting, auditing and insurance counseling services as may be necessary for the Project but is not responsible for A/E's legal and accounting expenses.
- 5.6** The services, information, surveys, and reports required by the preceding sections shall be furnished at the Owner's expense.
- 5.7** The Owner will review the A/E's design at the completion of schematic design and design development, and at the completion of the stages of Construction Documents as described in this article. Comments concerning corrections or amendments to the plans and specifications will be furnished in writing to the A/E as promptly as possible after receipt of the documents for review. Owner's approval of the documents must be in writing and no approval may be deemed given in the absence of written approval. The Owner may require the A/E to halt production during design review.
- 5.8** The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as possible for the orderly progress of the A/E's services and of the Work.

- 5.9 The Owner may furnish one or more construction inspectors who shall be responsible for inspection of the Work, consisting of close, on-site examination of the materials, structure, and equipment; and surveillance of the workmanship and methods used to ensure that the Project is reasonably accomplished in accordance with the Construction Documents and good construction practices.

ARTICLE 6. Construction Cost

- 6.1 The estimated construction cost shall be the total cost of all elements of the Project, including all alternate bids or proposals, designed and specified by the A/E.
- 6.2 The estimated construction cost shall include at current market rates a reasonable allowance for overhead, profit and general conditions, the cost of labor and materials furnished by the Owner and any equipment which has been shown in the plans, specified, and specially provided for by the A/E.
- 6.3 The estimated construction cost does not include compensation to the A/E and the A/E's consultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the Owner as provided in **Article 5**.
- 6.4 The Estimated Construction Cost shall include an overall design contingency for each design phase as follows:
 - Schematic Design..... 15%
 - Design Development..... 10%
 - Construction Documents... 5%

ARTICLE 7. Direct Salary Expense

- 7.1 Direct Salary Expense ("DSE") is defined as the actual salaries, expressed on an hourly wage basis, prior to deductions for employment taxes (such as FICA, Medicare, income tax withholding) and employee-paid benefits, of all personnel, including A/E's employees directly engaged on the Project (and performing consultations or research or preparing designs, Drawings, and Specifications for the Project). DSE shall exclude mandatory and customary fringe benefits and employee benefits (such as employer-paid insurance, sick leave, holidays, vacation, pensions and similar contributions, or additions such as bonuses or other surplus payments), overhead expense (which includes salaries of bookkeepers, secretaries, clerks, and the like), and profit relating to the project. Any multiplier applied to such DSE shall be for the purpose of covering such fringe benefits, expense, and profit. All personnel shall mean anyone employed by the A/E and its consultants including, but not limited to, architects, officers, principals, associates, A/E, CADD technicians, engineers, designers, job captains, draftspersons, and specifications writers, who are performing consultation, research or design, or who are producing drawings, specifications, plans, or other documents pertaining to the Project, or who are performing services during construction at the Property that are directly attributable to, and necessary for, such construction.
- 7.2 Prior to entering into any agreement between the A/E and the Owner, and the A/E and its consultants, the A/E shall submit a full list of all personnel titles and the hourly wage for each

which is attached hereto as **Attachment F**. The hourly rates contained therein may be adjusted semi-annually in accordance with the usual and customary salaries of the architectural profession in the area of A/E's office.

ARTICLE 8. Reimbursable Expenses

8.1 When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed pursuant to the rates set by the State of Texas Textravel, in accordance with 34 Texas Administrative Code, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract.

8.2 Reimbursable expenses are in addition to the compensation for Basic Services and Supplemental Services. These include actual out-of-pocket reasonable expenditures made by the A/E and the A/E's employees and consultants incurred solely and directly in connection with A/E's performance of its services hereunder for the following expenses:

8.2.1 Fees paid for securing approval of AHJ over the Project.

8.2.2 Professional models and renderings produced for presentations when requested by the Owner.

8.2.3 Shipping or mailing of all reports, Drawings, Specifications, and other items in connection with the Project except for correspondence between the A/E and the Owner; A/E's in-housework or correspondence; or work or correspondence exchanged between the A/E and its consultants.

8.2.4 Expense of any supplemental insurance coverage or limits that exceed those required by this Contract, when requested by the Owner.

8.2.5 Out-of-state travel must be approved in writing by Owner before the travel occurs. Expense of transportation in connection with out-of-state travel is reimbursed as follows:

8.2.5.1 Travel from Texas to out-of-state locations:

Maximum rates for lodging and meals shall be in accordance with the "Out of State Meals and Lodging Rates," Texas Comptroller of Public Accounts. (Website: https://fm.xcpa.state.tx.us/fm/travel/out_of_state/index.php) plus city and state taxes.

Notwithstanding the limitation on lodging rates above, if the expenses actually incurred by the A/E for lodging exceed the state rate, the service provider may be reimbursed for the Supplemental amount incurred up to a maximum of forty percent (40%) of the state rate.

The meal per diem will only be paid on trips involving overnight travel.

8.2.5.2 Travel to Texas from out-of-state locations:

Lodging: maximum reimbursement for lodging in state shall be limited to current State of Texas per diem rate plus city and state taxes. The meal per diem will only be paid on trips involving overnight travel.

Notwithstanding the limitation on lodging rates above, if the expenses actually incurred by the A/E for lodging exceed the state rate, the service provider may be reimbursed for the Supplemental amount incurred up to a maximum of forty percent (40%) of the state rate.

Meals and reimbursement limited to current State of Texas per diem rate.

8.2.5.3 **Automobile Expenses:** auto rental for moderate size category, related auto insurance, gasoline, parking, and taxi service. Costs include applicable taxes.

8.2.5.3.1 **Airline Travel:** coach class air travel with rates nearest to the state contract rate. All airline travel shall be booked no less than 7 days in advance when possible. Reimbursement for air travel booked within 7 days of departure, without the prior approval of the Owner, may be limited. A sales receipt and a boarding pass must be provided for each flight in order to receive reimbursement.

8.2.5.3.2 **Approval:** unless expressly directed and approved “in writing” by the Owner, amounts exceeding the above stipulated limitations will not be subject to reimbursement.

8.2.6 Expenses of any reprographic services that are in addition to those required under Basic Services requested by the Owner in writing, including, but not limited to reproduction and delivery of plans, specifications, addenda, reports, or other miscellaneous documents. Reprographic services may include electronic document files or paper printing and delivery. Authorized supplemental reprographic services that are not provided in-house by the A/E shall be procured in the following manner:

8.2.6.1 A/E shall develop a complete scope of services fully describing the services to be provided by the reprographic vendor. The A/E shall submit the scope of services to and request bids from at least three reprographic vendors, including at least one woman-owned HUB firm and one minority-owned HUB firm. For services projected to be less than \$25,000.00, three bids procured by telephone are acceptable. For services anticipated to be greater than \$25,000.00, three written bids are required. An updated HUB Subcontracting Plan reflecting the new scope of work shall be submitted to the Owner’s HUB Coordinator for approval.

8.2.6.2 Reprographic services vendor shall provide, as a minimum, the following information in its bid proposal to the A/E:

8.2.6.2.1 Its ability to handle projected volume on given schedule.

8.2.6.2.2 Its ability to receive and warehouse A/E’s electronic document files.

8.2.6.2.3 Its ability to manage bid document deposit process.

8.2.6.2.4 Its ability to print partial document sets as directed by A/E.

8.2.6.3 A/E shall provide written confirmation attesting to the competitive nature of the procurement.

8.2.6.4 A written Owner's request is required for reimbursement of these expenses.

- 8.3** Unless expressly directed, and approved in advance, by the Owner, transportation, lodging, meals incurred within the State of Texas, for firms whose principal address is within the State of Texas, will not be subject to reimbursement.
- 8.4** Expenses not allowed for reimbursement include the cost of review documents required to be provided to the Owner under **Article 18**, telephone charges, FAX service, alcoholic beverages, laundry, valet service, entertainment, or any non-Project related items. All tips must be included within the per diem allowances.
- 8.5** Owner shall pay a mark-up not to exceed ten percent (10%) on those reimbursables identified in **Sections 8.2.1-8.2.4** above. A mark-up shall not be paid on lodging, meals or travel expenses. A/E shall submit receipts for all reimbursable expenses along with any reimbursement request.

ARTICLE 9. Basis of Compensation

The Owner shall compensate the A/E for the services provided in accordance with **Article 10**, Payments to the A/E, and other terms and conditions of this Contract, as follows:

9.1 Basic Services Fee

9.1.1 For Basic Services, as described in **Article 4**, and including all disciplines identified in **Article 18.1** as part of Basic Services, the A/E's Basic Service Fee shall be calculated as follows:

9.1.1.1 The A/E's Basic Services Fee will be based on the final Construction Cost Limitation regardless of whether the actual contract award for construction, less special cash allowances and construction contingency, is more or less than the Final Construction Cost Limitation provided that the resulting fee, when expressed as percentage of the actual contract award cost, shall not exceed the maximum percentage fee or any other limitations imposed by law.

9.1.2 Supplemental Services. If the description of the A/E's Basic Services is changed materially, the applicable fee percentage shall be adjusted equitably, subject to the maximum fee limitations established by the Owner.

9.2 Fees for Changes in Project Scope

9.2.1 For reductions in the Scope of the Work of the Project that occur after commencement of the construction documents phase but before establishment of the Final Construction Cost Limitation, the A/E's fee for basic services related to the eliminated portion of the Work, to the extent such services are provided, shall be calculated using the same percentage fee used to establish the Basic Services Fee times the lowest bona fide bid or negotiated proposal for the eliminated Scope of Work. If no bid or proposal is received,

an up-to-date detailed Construction Cost Estimate for the eliminated Scope of Work shall be calculated for A/E's fee, but only to the extent that services for the eliminated scope of work were performed.

- 9.2.2** For increases in the Scope of Work of the Project that occur after establishment of the Final Construction Cost Limitation, the fee for the Supplemental Basic Services required will be calculated using the same percentage fee used to establish the Basic Services Fee times the lowest bona fide bid or negotiated proposal for the added Scope of Work. If no bid or proposal is received, an up-to-date detailed Construction Cost Estimate for the added Scope of Work shall be calculated for A/E's fee, but only to the extent that services for the added scope of work are required.

9.3 Fees for Change Order Services

- 9.3.1** If revised Construction Documents are required due to material changes ordered by the Owner and not due to errors and omissions on the part of the A/E, the fee for the Supplemental Basic Services required will be calculated using the same percentage fee used to establish the Basic Services Fee times the lowest bona fide bid or negotiated proposal for the changes to the Work or, if no bid or proposal is received, an up-to-date detailed Construction Cost Estimate for the changes to the Work, but only to the extent that services for the changes to the Work are required.

9.3.2 Supplemental Services

9.3.2.1 Fees for Supplemental Services, including any services identified in Article 18 are in addition to the Basic Services Fee described above.

9.3.2.2 For Supplemental Services of the A/E that are not Basic Services or Supplemental Basic Services due to changes in Project scope, the A/E's fee shall be calculated as follows.

9.3.2.3 The fees for Supplemental Services will be negotiated by the Owner and the Architect/ Engineer as the scope of the Supplemental Services is defined and shall be calculated in one of the following ways:

- i) A pre-established lump sum amount;
- ii) An agreed percentage of the Final Construction Cost of the Work resulting from the service being provided; or
- iii) On an hourly basis for time expended at an amount not to exceed three times the direct salary expense for all personnel directly involved in providing the service.

9.3.3 In the absence of an agreement between the Owner and the A/E, the fees for Supplemental Services shall be calculated on an hourly basis.

9.3.4 For Supplemental Services of the A/E's consultants that are not Basic Services or Supplemental Basic Services due to changes in Project scope, the A/E's fee shall be calculated as an amount not to exceed 1.10 times the amount that the consultant bills the A/E for the Supplemental Services. The consultant's fee for the Supplemental Services

shall be calculated in the same manner as described above.

9.4 Reimbursable Expenses

For reimbursable expenses, as described in **Article 8**, and any other items included in **Article 18** as Reimbursable Expenses, the A/E's reimbursement shall be calculated as an amount not to exceed 1.10 times the amounts actually expended by the A/E, the A/E Personnel in the interest of the Project.

ARTICLE 10. Payments to the Architect/Engineer

10.1 Payments for Basic and Supplemental Services

- 10.1.1 All payments by Owner under this Contract shall be made upon the receipt and acceptance of a correct invoice in accordance with the "Texas Prompt Payment Act," Texas Government Code Chapter 2251.
- 10.1.2 A/E shall submit monthly invoices to Owner for services and shall be in proportion to services performed within each phase of services, as demonstrated by work product, in accordance with Draft Project Milestone Schedule.
- 10.1.3 No partial payment made shall be, or construed to be, final acceptance or approval of the services to which the partial payment relates, or a release of A/E of any of A/E's obligations or liabilities with respect to such services.
- 10.1.4 A/E shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services in accordance with the "Texas Prompt Payment Act," Texas Government Code Chapter 2251.
- 10.1.5 A/E shall submit a request for final payment to the Owner within thirty (30) days after approval of the final payment to the Contractor.
- 10.1.6 Should there be any claim, obligation, or lien asserted before or after final payment is made that arises from A/E's Services, A/E shall reimburse the Owner for any costs and expenses, including attorneys' fees, costs and expenses, incurred by the Owner in satisfying, discharging, or defending against any such claim, obligation or lien, including any action brought or judgment recovered, provided the Owner is making payments or has made payments to A/E in accordance with the terms of this Contract.
- 10.1.7 The acceptance by A/E, or A/E's successors, of final payment under this Contract shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which A/E, or A/E's successors, have or may have against Owner under the provisions of this Contract except those claims previously made in writing and identified by A/E as unsettled at the time of the final request for payment. For purposes of Texas Government Code Section 2251.021, the date the performance of service is completed is the date when the ODR approves the invoice.
- 10.1.8 For purposes of Texas Government Code Section 2251.021, the date the performance of service is completed is the date when the ODR approves the invoice.

10.2 **Payments for Reimbursable Expenses**

The A/E shall submit monthly invoices for Reimbursable Expenses after presentation of the A/E's valid statement of services rendered or expenses incurred as approved by Owner and will be paid in accordance with the "Texas Prompt Payment Act," Texas Government Code Chapter 2251.

10.3 **Payments Withheld**

10.3.1 Under no circumstances shall the Owner be obligated to make any payment (whether a progress payment or final payment) to A/E if any one or more of the following conditions precedent exist:

10.3.1.1 A/E is in breach or default under this Contract;

10.3.1.2 Any portion of a payment is for services that were not performed in accordance with this Contract provided, however, payment shall be made for those services which were performed in accordance with this Contract;

10.3.1.3 A/E has failed to make payments promptly to consultants or other third parties used in connection with services for which Owner has made payment to A/E;

10.3.1.4 If Owner, in its good faith judgment, determines that the balance of the unpaid fees are not sufficient to complete the services in accordance with this Contract, or

10.3.1.5 A/E has failed to achieve a level of performance necessary to maintain the project schedule.

ARTICLE 11. Architect/Engineer Books and Records

11.1 Books and Records. A/E shall keep and maintain under generally accepted accounting principles full, true and complete records, including but not to, records of Reimbursable Expenses and expenses pertaining to Supplemental Services and services performed on the basis of a multiple of Direct Salary Expense as are necessary to fully disclose to Owner 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 Contract and all state and federal regulations and statutes.

11.2 Records for Direct Salaries. A/E shall submit a notarized statement documenting that the Direct Salaries stated on **Attachment F** comply with the definition for DSE under **Article 7** and that any multiplier applied to DSE on **Attachment F** complies with the definition for DSE under **Article 7**. A/E shall break down the multiplier under **Article 7** for the purpose of fringe benefits, expense, and profit to justify the multiplier up to a maximum of 3 allowed under **Section 9.2**.

11.3 Records Retention. All records relevant to this Contract shall be retained by the A/E for a minimum of seven (7) years. This retention period runs from the date of payment for the relevant goods or services by Owner, or from the date of termination of the Contract, 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.

ARTICLE 12. Ownership and Use of Documents

- 12.1** Drawings and Specifications as instruments of service are and shall remain property of the A/E whether the Project for which they are made is executed or not. The Owner shall be permitted to retain copies, including reproducible copies, of Drawings and Specifications for information and reference in connection with the Owner's use and occupancy of the Project. Owner shall have an irrevocable, paid-up, and perpetual non-exclusive license and right, which shall survive the termination of this Contract, to use the Drawings and Specifications, including the originals thereof, and the ideas and designs contained therein, for any purpose, regardless of whether A/E remains as the A/E, has resigned, this Contract has been terminated, A/E's scope of services has been modified, or the services herein have been completed. If this Contract is terminated, A/E hereby consents to the employment by Owner of a substitute A/E to complete the services under this Contract, with the substitute A/E having all of the rights and privileges of the original A/E. The A/E and its consultants shall not be liable for any changes made by the Owner to the Drawings or Specifications (including Drawings or Specifications provided in CADD or other electronic format) or for claims or actions arising from any such changes on projects in which the A/E is not involved.
- 12.2** Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the A/E's rights.

ARTICLE 13. Contract Suspension, Default, and Termination

13.1 Suspension by Owner for Convenience

The Owner may at any time order A/E to suspend its services on the Project for the convenience of Owner. Any such suspension shall not terminate or void this Contract.

13.2 Termination by Owner for Convenience

Owner shall have the right at any time and for any reason to terminate for convenience this Contract and any one or more tasks, in whole or in part, by giving written notice to A/E. Upon receipt of the Owner's order or notice of termination for convenience, A/E shall immediately discontinue services as directed therein, except as expressly directed otherwise therein. A/E shall thereafter do only such services and work as may be necessary to preserve and protect work already completed. In case of such termination, A/E shall be entitled to payment only for services and work satisfactorily performed prior to termination and reasonably performed thereafter in closing out any task in accordance with such notice. The foregoing shall be the sole remedy available to A/E in the event of such termination by Owner. In no event shall A/E be entitled to payment of lost profits, lost opportunity or any damages relating to services not performed due to such termination. Owner's right to terminate as provided herein shall not be construed as affecting in any way the rights, duties or obligations of the parties should Owner terminate this Contract for cause upon A/E's breach or default.

13.3 Termination by Owner for Cause

- 13.3.1 Owner may terminate the Contract if A/E, despite written notice from Owner, and the expiration of ten (10) days after the receipt of such notice:
- a) refuses or fails to supply enough properly skilled personnel;
 - b) fails to make payment to A/E personnel for services in accordance with the respective agreements between A/E and A/E personnel;
 - f) disregards applicable law;
 - g) commits a substantial breach of any provision of this Contract;
 - h) fails to furnish Owner, upon request, with assurances satisfactory to Owner evidencing A/E's ability to complete the Services in compliance with all the requirements of this Contract; or
 - i) fails to proceed continuously and diligently with the professional services, except as otherwise excused under this Contract.
- 13.3.2 When any of the above reasons exist, Owner may, without prejudice to any other rights or remedies of Owner, which rights and remedies are expressly reserved herein, terminate the Contract with A/E and: (i) take possession of all Work Product in the possession of A/E; (ii) accept assignment of subcontracts pursuant to this Contract; and (iii) complete the Services by whatever reasonable method Owner may deem expedient.
- 13.3.3 In addition to the foregoing, if Owner at any time has reasonable grounds to believe that A/E is in default, or likely to default, in the performance of its obligations under this Contract, Owner may request in writing, and A/E shall provide to Owner in writing within ten (10) days after receipt of Owner's request, adequate assurance of A/E's present and future ability to perform its obligations, failing in which A/E shall be deemed to be in material default of this Contract. A/E's written response to such request shall include evidence sufficient to demonstrate A/E's ability to perform to the reasonable satisfaction of Owner. Owner's determination that A/E has failed to provide evidence sufficient and satisfactory to constitute adequate assurance of its ability to perform hereunder shall not be subject to challenge if A/E has failed to cure, within the time permitted under **Section 13.3.1**, a condition of default specifically referenced in Owner's written demand to cure such condition of default.
- 13.3.4 If, in the event of a termination for cause, the unpaid balance of all compensation remaining to be earned by A/E under this Contract exceeds the sum of the cost of finishing the professional services, including compensation for the services and expenses of Owner and Construction Manager that are made necessary by A/E's default, and any other damages incurred by Owner as a result thereof, and not expressly waived, such excess shall be paid to A/E. If such costs and damages exceed such unpaid balance, A/E shall be liable to pay the difference to Owner, which amount shall be immediately due and owing to Owner. This obligation for payment shall survive termination of this Contract.
- 13.3.5 Upon determination by a court of competent jurisdiction that termination of A/E

pursuant to this **Section 13.3** was wrongful, such termination will be deemed converted to a termination for convenience pursuant to **Section 13.2** and A/E's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth therein.

13.4 Selection of Another A/E

In the event of expiration of the Contract or any termination of this Contract by Owner, in whole or in part, A/E consents to Owner's selection of another to serve as A/E to assist Owner in completing the Project. Upon termination for any reason whatsoever, A/E shall promptly deliver to Owner all information, including all electronic documents, in A/E's possession relating to the Design Program and the Project. A/E further agrees to cooperate and provide any further information requested by Owner in connection with the completion of A/E's obligations with respect to the Design Program and the Project.

13.5 No Payment for Unsatisfactory Work

Nothing contained in **Article 13** shall require Owner to pay for any services or work under the terms of this Contract which are unsatisfactory, or which are not submitted in compliance with the terms of this Contract. Owner shall not be required to make any payments to A/E when A/E is in default under this Contract, nor shall this Article constitute a waiver of any right, at law or at equity, which Owner may have if A/E is in default, including the right to: (i) terminate this Contract; (ii) bring legal action for damages; or (iii) enforce specific performance of this Contract. Nothing in this Contract shall be construed as a waiver by Owner of its right to assert a claim for breach of contract with respect to any breach hereof, including any latent defect in A/E's professional services, if the same was not actually discovered by Owner in sufficient time to report the same to A/E prior to expiration of the Contract term or prior to Owner's termination of this Contract for any reason.

13.6 Default

A/E will comply with and act in good faith in the performance of all provisions of this Contract. In addition to breaches, or actions or omissions of default, set forth in the UGCs (**Attachment H**), A/E acknowledges that any of the following actions by the A/E will be considered a default(s) under this Contract and Owner will have the right to pursue the remedies and sanctions described herein or otherwise available in law or equity:

13.6.1 Submitting falsified documents or fraudulent invoicing or making false representations or certifications relating to this Contract.

13.6.2 Endangering the life, health, welfare or safety of clients, staff, and visitors at a state facility;
or

13.6.3 Violating provisions of the Contract including, but not limited to, failing to perform according to the terms and conditions or within the time limit(s) specified in the Contract, including but not limited to the following:

13.6.3.1 Failing to abide by applicable federal and state statutes, such as those regarding handicapped persons and civil rights.

- 13.6.3.2 Failing to meet standards that are required by state or federal law, department rule, or Texas state agency rule or policy concerning providers of professional architectural and engineering services;
- 13.6.3.3 Failing to meet standards that are required by state or federal law, department rule, or Texas state agency rule or policy concerning providers of professional architectural and engineering services;
- 13.6.3.4 Failing to notify and reimburse the Owner for services the Owner paid for when the A/E received reimbursement from a liable third party;
- 13.6.3.5 Failing to disclose or make available, upon demand, to the Owner or representatives (including appropriate Federal and state agencies and their representatives, including independent financial auditors) any records the A/E is required to maintain;
- 13.6.3.6 RESERVED
- 13.6.3.7 Failing to correct contract performance deficiencies following written notification from the Owner;
- 13.6.3.8 Failing to repay to Owner any identified overpayment or other erroneous payments within thirty (30) days of overpayment, or within thirty (30) days of notification by the Owner to the A/E, or to make and follow through with arrangements satisfactory to the Owner to repay such overpayments or erroneous payments, or
- 13.6.3.9 Failing to perform or comply with any covenant, term, or condition of the Contract.

13.7 Remedies

The Owner may impose remedies or corrective action plans as described in this section, available under law, or in UGCs (**Attachment H**) for A/E's default under this Contract. The Owner at its discretion may impose as many remedies and sanctions as appropriate on a case-by-case basis.

13.7.1 Informal Remedies:

- 13.7.1.1 Requesting A/E to respond in writing to identified problems;
- 13.7.1.2 Conducting more frequent or more extensive monitoring of A/E services;
- 13.7.1.3 Requiring A/E to obtain additional training or technical assistance; and
- 13.7.1.4 Requiring A/E to submit additional or more detailed financial and/or programmatic reports.

13.7.2 Other Remedies:

- 13.7.2.1 Terminating the Contract;
- 13.7.2.2 Withholding of payments;
- 13.7.2.3 Recouping payments from A/E; or
- 13.7.2.4 Reducing the Contract Amount.

13.8 Remedy Notifications

The Owner will formally notify A/E in writing the reasons for proposing or imposing a remedy, any corrective action that must be taken before the remedy will be removed and the time allowed for completing the corrective action. If A/E believes the Owner's imposition of the remedy is in error, A/E may submit to the Owner a written request for a review of the issue within ten (10) days after the date of notification.

13.8.1 A/E's request for review will contain the following:

- 13.8.1.1 A copy of any correspondence from the Owner notifying A/E of the remedy;
- 13.8.1.2 A description of each act that is the basis for the remedy;
- 13.8.1.3 The basis for A/E 's belief that the Owner's imposition of the remedy is in error;
- 13.8.1.4 Any documentation in support of A/E 's position; and
- 13.8.1.5 A statement and authorities in support of A/E 's position

13.8.2 On or before ten (10) days following receipt of the A/E 's request for review, the Owner will review the A/E 's request, who may permit or require additional information. The decision of the Owner will be in writing and will contain the reason for the decision and the remedial action, if any.

ARTICLE 14. Successors and Assigns

- 14.1** The Owner and A/E, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other Party to this Contract and to the partners, permitted successors, assigns and legal representatives of such other Party with respect to all covenants of this Contract.
- 14.2** Architect's/Engineer's interest in this Contract, duties hereunder, and/or fees due hereunder may not be assigned or delegated to a third party without the without the prior written consent of the Owner, which may be withheld or granted at the sole discretion of the Owner. 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 Contract. A/E must provide written notification to the Owner of any such Subcontractor performing work under this Contract, 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.

ARTICLE 15. Extent of Contract

This Contract constitutes the entire agreement of the Parties and is 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. This Contract may only be amended by an Amendment executed by both Parties. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible by the Owner.

ARTICLE 16. Miscellaneous Provisions

- 16.1 Name and Organizational Changes.** A/E must provide the Owner 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, identify any personnel changes, and describe how the change will impact its ability to perform under this Contract. The Owner may request other information about the change and its impact on the Contract and A/E shall supply the requested information within five (5) business days of receipt of the request. The Owner may terminate the Contract due to any change to A/E that materially alters A/E's ability to perform under the Contract.
- 16.2 Independent Contractor.** A/E acknowledges that it is engaged as an independent contractor and that Owner has no responsibility to provide A/E or its employees with transportation, insurance or other fringe benefits normally associated with employee status. A/E is not, and will not claim to be, an officer, partner, employee or agent of Owner and shall not make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. A/E hereby agrees to make A/E's own arrangements for any of such benefits as A/E may desire and agrees that A/E is responsible for all income taxes required by applicable law.
- 16.3 Confidentiality.** To the extent permitted by law, A/E agrees to keep all information confidential, in whatever form produced, prepared, observed, or received by A/E. The provisions of this section remain in full force and effect following termination or cessation of the services performed under this Contract.
- 16.4 Limitation on Authority and No Other Obligations.** A/E shall have no authority to act for or on behalf of the Owner or the State of Texas except as expressly provided for in this Contract; no other authority, power, or use is granted or implied. Owner hereby expressly reserves the right from time to time to designate by written notice to the A/E to act partially or wholly for the Owner in connection with the performance of the Owner's obligations hereunder. A/E may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the Owner or

the State of Texas.

16.5 Right of Owner to Issue Safety Stand-Down Order. The Owner, in its sole discretion, may at any time order in writing a temporary stand-down of A/E's performance of the Services ("Safety Stand-Down Order") as a result of any one or more Safety Incidents, whereupon A/E shall immediately direct all A/E personnel to stop all Services while A/E conducts a comprehensive review of A/E's safety management plan and any site conditions affecting safety at any Project Site, for the purpose of (i) identifying any safety hazards and unsafe working conditions, (ii) conducting safety training of the A/E's Personnel involved in performance of the Services who were or may have been exposed to harm in connection with such Safety Incident(s), and (iii) taking any corrective action that A/E determines to be necessary and appropriate to fulfill its obligations in accordance with this Contract. Upon receipt of the Owner's Safety Stand-Down Order, A/E shall not resume performance of the Services until it has issued to Owner a written report, which shall be due within forty-eight (48) hours of the receipt of Owner's Safety Stand-Down Order, detailing the course of action that A/E has taken, or plans to take, to resolve the Safety Incident(s) described therein, and to prevent the recurrence thereof. After reviewing such course of action with the Owner, A/E shall, in the exercise of the A/E's reasonable judgment, propose the date by which A/E will complete all corrective action. Services shall resume only upon Owner's delivery of further written notice to A/E withdrawing the Owner's Safety Stand-Down Order, which notice of withdrawal shall not be issued until the Owner is reasonably satisfied that A/E has sufficiently implemented all appropriate corrective action as necessary to enable A/E to safely resume Services, fulfill its contractual obligations set forth in this Contract, and thereby avoid recurrence of the Safety Incident(s). A/E shall not be entitled to an adjustment of the A/E's Compensation, or the Professional Services Schedule, as the result of Owner's issuance of a Safety Stand-Down Order. If A/E fails to implement the corrective action in the manner proposed by A/E and determined by Owner to be reasonably acceptable, such failure shall be deemed a material breach of this Contract and Owner may, without further notice, terminate this Contract for cause. In responding to any Safety Stand-Down Order, A/E's evaluation of the need for, and its plan of, corrective action shall be undertaken as an independent contractor, and nothing herein shall be construed or interpreted to mean that Owner has assumed or agreed to assume any duty of care to the A/E Personnel, or to provide guidance or instruction as to the A/E's means and methods for managing safety as required by this Contract. Any action taken by Owner hereunder to enforce Owner's rights to require A/E to fulfill its safety obligations under this Contract shall be deemed to be undertaken solely for the purpose of fulfilling Owner's contractual expectation of results in terms of delivery of the Projects without causing injury or harm to persons or property.

16.6 Waivers. The failure of Owner to object to or to take affirmative action with respect to any conduct of the A/E which is in violation or breach of the terms of the Contract shall not be construed as a waiver of the violation or breach, or of any future violation or breach. A waiver by either of the Parties hereto of any of the covenants, conditions, or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained. A payment, act or omission in any manner will not impair or prejudice any right, power, privilege, or remedy available to the Owner to enforce its rights, powers, privileges, and remedies are specifically preserved. No employee or agent of the Owner may waive the effect of this provision. No waiver by the Owner is valid unless authorized by the Owner's executive commissioner or his/her designee in writing.

16.7 Force Majeure. Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a “Force Majeure”), then, while so prevented, the affected Party’s obligation to comply with such covenant will be suspended, and the affected Party will not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure will promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice will set forth the extent and duration thereof.

16.8 Contract Representatives. The following individual will act as the Architect’s/Engineer’s Designated Representative (“Project Manager”) or ODR authorized to administer activities, including but not limited to, non-legal notices, consents, approvals, demands, requests, or other general communications provided for or permitted to be given under this Contract. All consents, approvals, go-aheads, etc. by ODR’s are not valid, unless given in writing. The designated Project Manager and ODR are as follows:

Project Manager

Shane Mommers
350 N Saint Paul St, #100
214.969.5599
smommers@hksinc.com

ODR

Renu Razdan
HHSC Team Member
909 West 45th Street; Mail Code: 2064
Austin, Texas 78751
(512) 647-8553
Renu.razdan@hhs.texas.gov

With copy to:

Renu Razdan, AIA, Director, Maintenance
and Construction Dept.
909 West 45th Street; Mail Code: 2064
Austin, Texas 78751
(512) 647-8553
Renu.razdan@hhs.texas.gov

Either Party may change its designated Project Manager or ODR by providing written notice to the other Party.

16.9 Legal Notices. Any legal notice required under this Contract shall be deemed delivered when deposited by the Owner either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

Architect/Engineer

David Vincent
350 N Saint Paul St, #100
214.969.5599
dvincent@hksinc.com

Owner

Health and Human Services Commission
Attn: Office of Chief Counsel
4601 W. Guadalupe Street; MC 1100
Austin, Texas 78751-3146

With copy to:
David Vincent
350 N Saint Paul St, #100
214.969.5599
dvincent@hksinc.com

With copy to:
Health and Human Services Commission
Attn: Director of Maintenance and Const.
909 West 45th Street; Mail Code: 2064

Notice given by A/E will be deemed effective when received by Owner. Either Party may change its address for legal notice by providing written notice to the other Party.

16.10 Dispute Resolution. Subject to Section 2260.002 of the Texas Government Code, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections (a)-(d) shall be used by the parties to attempt to resolve all disputes arising under this Contract. In accordance with Section 114.005 of the Texas Civil Practice and Remedies Code, the Parties agree claims encompassed by Section 2260.002(3) of the Texas Government Code and Section 114.002 of the Texas Civil Practice and Remedies Code shall be governed by the dispute resolution process set forth below in subsections (a)-(d).

(a) Notwithstanding Sections 2260.002(3) and 114.012 of the Texas Government Code and any other statute or applicable law, if the A/E's claim for breach of contract cannot be resolved by the Parties in the ordinary course of business, A/E may make a claim against Owner for breach of contract and the Owner may assert a counterclaim against the A/E as is contemplated by Chapter 2260, Subchapter B, of the Texas Government Code. In such event, A/E must provide written notice to Owner of a claim for breach of the contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount the A/E seeks as damages; and (3) the legal theory of recovery.

(b) The chief administrative officer, or if designated in the Contract, another officer of the Owner, shall examine the claim and any counterclaim and negotiate with the A/E in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Chapter 2260, Section 2260.052, of the Texas Government Code.

(c) If the negotiation under subsection (b) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a Party's rights under this Contract as to the parts of the claim that are not resolved.

(d) If a claim is not entirely resolved under subsection (b) above, on or before the 270th day after the date the claim is filed with Owner, unless the Parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is the A/E's sole and exclusive process for seeking a remedy for an alleged breach of contract by the Owner if the parties are unable to resolve their disputes as described in this section.

(e) Nothing in the Contract shall be construed as a waiver of the State's or the Owner's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. 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 this Contract 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. Owner does not waive any privileges, rights, defenses, or immunities available to Owner by entering into this contract or by its conduct, or by the conduct of any representative of Owner, prior to or subsequent to entering into this Contract.

(f) Compliance with the dispute resolution process provided for in Chapter 2260, subchapter B, of the Texas Government Code, and incorporated by reference in subsections (a)-(d) above is a condition precedent to the A/E: (1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or (2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.

- 16.11 No Debt Against the State.** The Contract will not be construed as creating any debt by or on behalf of the State of Texas.
- 16.12 Loss of Funding.** Performance by Owner under this Contract may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, or the funds become unavailable, then Owner shall issue written notice to A/E and the Owner may terminate this Contract in accordance with **Article 13**. A/E acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.
- 16.13 Owner's Signature Authority.** Notwithstanding anything to the contrary provided herein, any amendment, modification, change, revision, correction, or alteration to this Contract or the services to be performed hereunder must be executed by the Owner's executive commissioner or an authorized designee of the Owner's executive commissioner to be valid.
- 16.14 Severability.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract will be construed as if such provision did not exist and the non-enforceability of such provision will not be held to render any other provision or provisions of this Contract unenforceable.
- 16.15 Survivability.** Termination or expiration of this Contract or a Contract for any reason will not release either party from any liabilities or obligations in this Contract that the parties have expressly agreed will survive any such termination or expiration, remain to be performed, or by their nature would be intended to be applicable following any such termination or expiration, including maintaining confidentiality of information and records retention.
- 16.16 Captions.** The captions of sections in this Contract are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- 16.17 Counterparts.** This Contract may be executed in multiple counterparts, each of which shall be deemed, construed and considered to be an original, but all of which shall constitute one and the same instrument. The Parties each agree that this transaction and Contract may be conducted under the Texas Uniform Electronic Transactions Act ("UETA"), and in particular, the Parties each consent to an electronic signature (as defined in Texas UETA) as an enforceable signature for this Contract and any amendment or activation thereto. The Parties further agree that that any objections that electronic signatures and electronically transmitted documents do not constitute the "best evidence" of the documents, or that they do not comply with the "Statute of Frauds," as well as any other similar objections to the validity or admissibility of the document,

are hereby expressly waived by the Parties.

ARTICLE 17. General Duties for Performance of Services

- 17.1** The A/E shall take all necessary precautions to prevent damage to the Owner's property, visible, or concealed, including any rights of way, and shall reasonably restore the Sites to the condition existing prior to the A/E's entry, including, but not limited to, repair of curbs, sidewalks, lawns, and plantings unless otherwise agreed to with the Owner.
- 17.2** The A/E shall inspect and timely become thoroughly familiar with the Site for the Project.
- 17.3** The A/E shall review and become thoroughly familiar with any and all relevant and existing Project, Site, and Facility Space Program and information.
- 17.4** The A/E shall assist the Owner, as and when requested, in project presentations.
- 17.5** The A/E understands and acknowledges that A/E has assumed the contractual obligation to the Owner to advise and assist the Owner in connection with the architecture and engineering for the Project. Unless otherwise directed by the Owner, the communications of the A/E with respect to the Services shall be concurrently directed to the Contractor and the Construction Manager, who shall jointly serve as the A/E points of contact to the Owner. Nothing in this Contract shall be construed to limit or restrict the right of the Owner to communicate directly with a service provider at any time. Owner expressly reserves such right hereunder, which right the Owner intends to expressly reserve in all of the Owner's contracts with the service providers. In no event shall the Owner's election to initiate any such communication be deemed or construed to be an interference with the contractual relationship or rights of A/E or any service provider, or an abrogation of any rights of Owner under this Contract.

ARTICLE 18. Other Conditions or Services

The Owner and A/E hereby agree to the full performance of the covenants contained herein.

- 18.1 Basic Services.** The A/E's Basic Services are those services described in **Sections 4.2 through 4.8** for which compensation is provided as Basic Compensation in this Contract and shall include the following disciplines:
- (a) Architectural Services;
 - (b) Behavioral Health Design Services;
 - (c) Interior Design Services;
 - (d) Programming Services;
 - (e) Landscape Architectural Services;
 - (f) Civil Engineering Services;
 - (g) Structural Engineering Services;
 - (h) Mechanical Engineering Services;

- (i) Electrical Engineering Services;
- (j) Plumbing Engineering Services;
- (k) Life Safety Code Compliance;
- (l) Security Consultant Services;
- (m) Audio Visual/Data & Telecommunications Engineering
- (n) Furniture and Equipment Purchasing Services; and
- (o) Code Required Wayfinding/Signage Design Services.

18.2 Supplemental Services. The services identified in the following list are not included in Basic Services.

18.2.1 Commissioning Services. The A/E shall employ a commissioning consultant to provide commissioning expertise through the Facility Space Program, schematic design, design development, construction document, bidding and proposal, and construction administration phases. The commissioning consultant will provide review input related project objectives, methods and concepts of commissioning. Following selection, the A/E shall provide the Owner with a written itemized cost proposal to provide the commissioning services for the Contract. The Owner will review the A/E's proposal for commissioning services in accordance with the Professional Services Procurement Act.

18.2.2 Hazardous Material Abatement Services. Will not to be provided by HKS under this Contract.

18.2.3 Registered Accessibility Specialist. The A/E shall employ an independent contract provider under contract with TDLR to include the Preliminary Plan Review and Final Plan Review and Field Inspection of placed Work to coincide with the pre-final inspections. Issues regarding accessibility shall be coordinated to be included in the Punchlist provided to the Contractor. Design consultation services and preliminary field inspections during installation of Work are optional services. These services are related to the provisions of the Texas Architectural Barriers Act (Article 9102, Texas Civil Statutes).

18.2.4 Drawings and Specifications. A/E shall revise the Drawings and Specifications upon Final Completion of the construction, to incorporate all Addenda, all Change Orders for the Work and any modifications recorded by the Contractor on the as-built Drawings and Specifications maintained at the job site. The A/E shall label the revised drawings and specifications as "Record Drawings" and "Record Specifications" and shall deliver copies to the Owner for record purposes, as follows:

18.2.4.1 Record Specifications: Provide one (1) bound hard copy set and one (1) electronic set of the fully conformed record specifications incorporating all changes and as-built conditions on Universal Serial Bus ("USB") or DVD in PDF.

18.2.4.2 Record Drawings: Provide one (1) complete bound print set of record drawings, and one (1) complete electronic set of the full record drawings incorporating all changes and as-built conditions on USB or DVD

18.2.4.3 All CADD drawing files shall be in AutoCAD DWG format compatible with the latest version of AutoCAD.

18.2.4.4 Drawings should be bundled using AutoCAD's "Pack-n-go" or "e-Transmit" utility to organize files in the root directory of the USB. All Drawing files must be listed before the support files and must include all required support files, such

as Xrefs, Fonts, Image files, and Print files. Do not put files in directories; all files must be in the root directory.

18.2.5 Food Service Design. The A/E will engage a food service equipment consultant to provide design expertise through the schematic design, design development, construction document, bidding and proposal, and construction administration phases. The food service equipment consultant will provide review input related project objectives, methods and concepts of food service for related spaces as identified in the Draft Facility Space Program.

18.2.6 Wayfinding and Environmental Graphics. The A/E will engage a signage consultant to provide design for the wayfinding and graphics for the project in addition to the required code compliant services that is a part of basic services.

18.2.7 Cost Estimating Services. The A/E will shall engage a recognized and specialized construction cost estimating consultant service acceptable to the Owner to prepare detailed construction cost estimates of the Project in a form acceptable to the Owner following the Construction Specifications Institute (“CSI”) format. Updated estimates shall be included with the plans and specifications submitted for review at completion of the schematic design phase, design development phase, and at the stages of completion of the Construction Documents.

18.3 Owner Provided Services. The services identified in the following list will be provided by the Owner at Owner’s expense.

- (a) Code Check;
- (b) Plan Check;
- (c) Testing and Balancing;
- (d) Laboratory Testing (Soils, Materials, Environmental, Welding, Steel Construction);
- (e) Geotechnical Engineering Survey;
- (f) Third Party Commissioning; and
- (g) Building Envelope Testing.
- (h) Hazardous Materials Surveying and Abatement

18.4 Basis of Compensation.

18.4.1 Basic Services. The initial Construction Cost Limitation (“CCL”) for the Project is:

Eighty-Five million and 00/100 dollars (\$85,000,000.00)

Therefore, the Basic Services Fee for the Project will be:

\$85,000,000.00	=	\$5,780,000*
Construction Cost Limitation		<u>Fixed</u> Basic Services Fee

The Owner may amend the CCL after the A/E completes the Draft Facility Space Program and the Owner authorizes the commencement of Basic Services. If the CCL is amended by Owner, and A/E has been notified in writing of such CCL, then this section of this Contract shall be deemed to be amended by including such CCL amount as the cost referenced to in the first sentence of this section of this Contract. The CCL will be confirmed or re-established at the completion of the design development phase.

18.4.2 Supplemental Services. The initial CCL for the Project is:

Eighty-Five million and 00/100 dollars (\$85,000,000.00)

Therefore, the Supplemental Services Fee for the Project will be:

<u>\$85,000,000.00</u>	=	<u>\$23,625.00</u>
Construction Cost Limitation		<u>Fixed</u> Supplemental Services Fee

18.4.3 Reimbursable Expenses. The maximum allowable cost on this Project for Reimbursable Expenses associated with Basic Services, identified in **Article 8**, as approved by the Owner is:

Maximum Reimbursable Expense Amount: \$289,000.00

18.4.4 Maximum Contract Sum.

Basic Services Fee amount (Section 18.4.1)

\$5,780,000.00

plus

Supplemental Services amount (Section 18.4.2)

\$23,625.00

plus

Maximum Reimbursable Expense amount (Section 18.4.3)

\$289,000.00

MAXIMUM CONTRACT SUM: \$6,092,625.00

18.5 Progress Payments. Payments for Basic Services and Supplemental Basic Services shall be made as provided in **Article 10** in accordance with the following schedule:

- Schematic design phase to include Programming.
& Facilities infrastructure/Site Assessment..... 25%
- Design development phase20%
- Construction documents phase25%
- Construction contract administration phase 27%
- Closeout3%

18.6 Review Stages. The A/E shall submit documents to the Owner for review at completion of the schematic design phase, design development phase or 50% Construction Documents (may be Guaranteed Maximum Pricing phase), and at the following stages of completion of the Construction Documents phase as follows:

50%, 95%, 100%

18.7 Construction Cost Estimates. The A/E shall submit construction cost estimates as described in **Section 4.2.17** at completion of the schematic design phase and design development phase or 50% Construction Documents (may be Guaranteed Maximum Pricing phase), and will assist in the review of the Construction Manager cost estimates at the following stages of completion of the Construction Documents phase:

50%, 95%, 100%

18.8 Review Documents. The A/E shall, at its expense, furnish and deliver to the Owner for Owner’s review, the following number of sets of review documents at the required review stages:

- Schematic Design: Four (4) sets - 50% size
- Design Development: Four (4) sets - 50% size
- Construction Documents: Four (4) sets for each stage of % complete - 50% size

Signature Page Follows

**SIGNATURE PAGE FOR PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES CONTRACT
HHSC CONTRACT NO. HHS001358700003**

BY SIGNING BELOW, the Parties have executed and bound themselves to this Contract as of the Effective Date.

Health and Human Services Commission

HKS, Inc.

DocuSigned by:
Scott Schalchlin
By: 0CB2E17A5C9C45D...

Scott Schalchlin

Deputy Executive Commissioner
Date signed March 8, 2024

DocuSigned by:
David Vincent
By: CCF0EB53EEE14D1...

David Vincent

Principal and Shareholder
Date signed March 8, 2024

Registration/License No. 12601

Tax I.D. No. 75-1082838

The following Attachments are fully incorporated into this Contract by reference:

- Attachment A** Contract Affirmations for State Architectural/Engineering and Construction Projects, v. 1.7 (November 2023)
- Attachment B** Draft Facility Space Program
- Attachment C** Estimated Project Milestones Schedule
- Attachment D** HHSC Architectural/Engineering Guidelines (July 2023)
- Attachment E** A/E's Historically Underutilized Business Subcontracting Plan
- Attachment F** A/E's Personnel Titles and Hourly Rates
- Attachment G** Supplemental Services Proposal Form
- Attachment H** Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions Version 2.2
- Attachment I** A/E Insurance Requirements for Project 24-204-EPC, New 50 Non-Maximum-Security Unit Beds in El Paso, TX
- Attachment J** HHS Uniform Terms and Conditions - Vendor, Version 3.4 (November 2023)
- Attachment J1** Modifications to HHS Uniform Terms and Conditions (Vendor)
- Attachment K** Architect/Engineer's Project Proposal Letters

Attachments Follow