TEXAS
Health and Human Services

Exhibit C

Draft Architectural/Engineering Agreement

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ARCHITECTURAL/ENGINEERING (A/E) AGREEMENT

HHSC Contract No. HHS############
REGION____# (#s)

The State of Texas, acting through the TEXAS HEALTH AND HUMAN SERVICES COMMISSION (HHSC), which, for particular projects, may be acting for, and on behalf of, the Texas Department of State Health Services, a Health and Human Service Agency, hereinafter referred to as the “Owner”, and ___(name of A/E)_____, hereinafter referred to as “A/E” or “Architect/Engineer”, enter into the following agreement for professional architectural and engineering services, hereinafter referred to as the “Agreement or Contract.” Owner and A/E may be referred to in this Agreement individually as “Party” and collectively as the “Parties.”

This Agreement is for the provision of professional A/E and technical support services for construction projects involving replacement, repair, renovation and rehabilitation, with limited new construction, to be performed on a non-exclusive, indefinite delivery, indefinite quantity basis, as requested by the Owner in accordance with the terms of this Agreement and activations thereunder. A/E represents that it has the knowledge, ability, skills and resources to provide such services in accordance with the terms and requirements of this Agreement.

The Owner and A/E agree as follows:

ARTICLE 1. DESCRIPTION OF AGREEMENT ACTIVATIONS FOR PROJECTS

1.1 The Owner may, but is not obligated to, periodically engage the professional services of A/E for a Specific Designated Project, hereinafter referred to as “Project” or “Projects”. The specific scope of work, cost, and other specific terms for each Project shall be negotiated and determined in advance and in writing in an Agreement activation (“ACTIVATION”) that is executed by the Owner and A/E. The Owner may, from time to time, engage the A/E for _____(identify discipline)_____ services at the Owner’s facilities located in Region(s) #(#s)____, including, ___(list of facilities)_____, & _____(list of facilities).

1.2 As stated in Article 9 below, the terms of the ACTIVATION are incorporated into the terms of this Agreement, and the ACTIVATION and Agreement are part of the entire Agreement as set forth in Paragraph 9.2 herein. In addition, by executing the ACTIVATION and performing thereunder, the A/E agrees that all terms and conditions of this Agreement apply to the Activation. Each Activation shall be substantially in the form of “Attachment C”.

1.3 DEFINITIONS

Unless the context clearly indicates otherwise, the terms and conditions have the meanings as provided in the Architectural/Engineering Guidelines, Health and Human Services Commission Maintenance and Construction dated March 2014, attached hereto and incorporated for all purposes as Attachment D and Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary Conditions, Version 2.2 (“UGCs”), attached hereto and incorporated for all purposes as Attachment E, for additional definitions.

Additionally, as used in this Contract, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

1.3.1 Architect/Engineer (A/E) means a person registered as an architect pursuant to Tex.Occ. Code Ann., Ch. 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Ch. 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Ch. 1001, and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.

1.3.2 ACTIVATION means the terms, condition and scope for a Project specific authorization.

1.3.3 AMENDMENT means any change to the Contract or ACTIVATION agreed to by the Parties other than those made by a Change Order.

1.3.4 CONSTRUCTION COST means the total Construction Cost to the Owner for the Project scope and budget, as quantified in the ACTIVATION. The CONSTRUCTION COST does not include A/E fees, Consultant fees, or the cost of any furniture and/or equipment not specified in the Construction Documents.

1.3.5 COST ESTIMATE means a statement of probable CONSTRUCTION COST is hereinafter referred to as "COST ESTIMATE." If the Cost Estimate, including stated contingencies, exceeds the CONSTRUCTION COST stated in Paragraph 5.1, the Owner will determine if the CONSTRUCTION COST in the ACTIVATION should be amended and the A/E will revise the documents to bring the Project within the CONSTRUCTION COST without additional cost to the Owner.

1.3.6 Contract means the entire agreement between Owner and A/E, including all of the Contract Documents.

1.3.7 Contract Documents mean those documents identified as a component of the agreement (Contract) between Owner and A/E. These may include, but are not limited to, Drawings; Specifications; General, Supplementary General, and Special Conditions; and all pre-bid and/or pre-proposal addenda.

1.3.8 Contractor means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.

1.3.9 Construction Documents mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.

1.3.10 Drawings mean that product of A/E which graphically depicts the Work.

1.3.11 Final Completion means the date determination certified by A/E and Owner that the Work is fully and satisfactorily complete in accordance with the Contract.

1.3.12 Historically Underutilized Business (HUB) pursuant to Tex. Gov't Code, Ch. 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity's affairs.

1.3.13 Owner means the State of Texas, and any agency of the State of Texas, acting through the responsible entity of the State of Texas identified in the Contract as Owner.

1.3.14 Project means all activities necessary for realization of the work. This includes design, contract award(s), execution of the work itself, and fulfillment of all Contract and warranty obligations.

1.3.15 Progress Assessment Report (PAR) means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).

1.3.16 Punchlist means a list of items of Work to be completed or corrected by Contractor after Substantial Completion. Punchlists indicate items to be finished, remaining work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.

1.3.17 Request for Information (RFI) means a written request by Contractor directed to A/E or ODR for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Contract Documents.

1.3.18 Special Conditions mean the documents containing terms and conditions which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions and Supplementary General Conditions.

1.3.19 Specifications mean the written product of A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.

1.3.20 Subcontractor, also known as Consultant, means a business entity that enters into an agreement with A/E to perform part of the work or to provide services, materials, or equipment for use in the work.

1.3.21 Substantial Completion means the date determined and certified by Contractor, A/E, and Owner when the work, or a designated portion thereof, is sufficiently complete, in accordance with the Construction Contract, so as to be operational and fit for the use intended.

1.3.22 Supplementary General Conditions mean procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions.

ARTICLE 2. PERIOD OF SERVICE

2.1 EFFECTIVE DATE

The effective date of this Agreement will be the later to occur of (a) September 1, 2021, or (b) the date the Agreement has been fully executed by the Parties. Unless sooner terminated as provided in Article 12, this Agreement will remain in force through August 31, 2023, or a period following which may reasonably be required for the design, award of a construction contract and construction of Projects that were activated prior to August 31, 2023, including supplemental work and any required extension thereto. The term of this Agreement may be extended for a period of two (2) additional year by mutual consent of both Parties by written amendment.

2.2 WORK PERIOD

The start work date of a Project will be as specified in the Owner's Notice to Proceed for each Project. Completion of services that include Construction Administration will be considered complete when the final payment is approved. Completion of services for Projects that do not include Construction Administration will be as identified in the ACTIVATION and any amendments.

2.3 WORK NOT GUARANTEED

The Owner does not guarantee to engage the A/E for any Projects, or a minimum number of Projects, or to pay the A/E any minimum fee amount. The Owner may choose to select another firm other than A/E to provide professional architectural and engineering services for a Project, as determined by the Owner in its sole discretion to be in the best interest of the Owner.

ARTICLE 3. SERVICES AND RESPONSIBILITIES OF THE A/E

3.1 PRE-DESIGN SERVICES

A/E will perform an on-site initial inspection to verify feasibility and completeness of each proposed Project, collect facts, and produce a detailed and complete fee proposal. The A/E's fee proposal shall as a minimum include a detailed project scope of work for each building, site system, and the like, included in the Project; proposed services to be performed by each A/E discipline (architectural, civil engineering, mechanical/electrical/plumbing engineering, and the like.); basic services phases needed; supplemental services needed; proposed timeframe for each basic services phase and supplemental service; proposed fee for each basic services phase and supplemental service including the fee by each discipline; fee calculations for each discipline including hours and hourly rates; and any other related expenses.

3.2 BASIC SERVICES

Basic services consist of the five (5) phases described in Paragraphs 3.2.1 through 3.2.5 when included for the work described in the ACTIVATION. Basic services include complete necessary and reasonable professional design services, including architectural, environmental engineering, structural engineering, mechanical engineering, electrical engineering and plumbing engineering. Specific Projects may require civil engineering, building envelope analysis, HVAC testing and balancing, geotechnical and materials testing, roofing, or fire protection engineering.

3.2.1 SCHEMATIC DESIGN PHASE

A/E will provide Schematic Design phase services including the services identified below when required in the ACTIVATION.

3.2.1.1 ASSESSMENT

3.2.1.1.1 A/E will meet with the Owner's representative to ascertain the requirements of each Project and develop a written program that defines the requirements of Project. The Owner will provide the A/E with a Project scope and CONSTRUCTION COST, as described in Paragraph 5.1. A/E will review and become familiar with the proposed CONSTRUCTION COST and will advise Owner whether, in the opinion of the A/E, the CONSTRUCTION COST is adequate to allow for the Project scope of work. If in the opinion of the A/E, the proposed CONSTRUCTION COST is inadequate, A/E will recommend appropriate adjustments to the Project scope as would be necessary to enable the Project to be completed within the CONSTRUCTION COST. Modification of CONSTRUCTION COST must be affected by written amendment by the Owner.

3.2.1.1.2 A/E will make inspections as needed to determine existing construction, including 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 additional 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.

3.2.1.2 CODE COMPLIANCE

A/E will identify and notify Owner concerning all codes, rules and regulations that must be complied with to complete the Project construction.

3.2.1.3 UTILITIES

A/E will interface with utility providers as is reasonably necessary to determine the necessary specifications for the connection of all utilities to the Project facilities.

3.2.1.4 DELIVERABLES

A/E will prepare Schematic Design documents based on the scope and requirements of the Project, existing conditions, schedule, and CONSTRUCTION COST. The documents will include conceptual floor plan(s), site plan(s) (if applicable), building sections (if applicable), building elevations (if applicable), descriptions of site utility systems, descriptions of building systems, and construction materials.

3.2.1.5 COST ESTIMATE

A/E will prepare a Cost Estimate that includes a fifteen percent (15%) construction contingency as described in Paragraph 5.4. If the Cost Estimate exceeds the CONSTRUCTION COST, as described in Paragraph 5.1, then A/E will consult with Owner to identify potential modifications that would result in a Cost Estimate within the established CONSTRUCTION COST in the ACTIVATION. Approved modifications will be incorporated into the Design Development, which A/E will provide at no additional cost to the Owner.

3.2.1.6 SUBMITTALS

A/E will submit the Schematic Design documents and the Cost Estimate to the Owner, attend a document review meeting at the Project site, and obtain the Owner's written approval of the Schematic Design documents and Cost Estimate before proceeding to the next phase.

3.2.2 DESIGN DEVELOPMENT PHASE

A/E will provide Design Development Phase services and will provide the services identified below when required in the ACTIVATION.

3.2.2.1 DELIVERABLES

Based upon the approved Schematic Design documents and any adjustment to the Project scope authorized by the Owner, A/E will prepare the Design Development documents consisting of drawings, outline specifications, product samples, and manufacturer's literature necessary to establish and illustrate the design criteria of the entire Project in its essentials as to kinds of materials, type of structure, mechanical, electrical, plumbing and fire protection systems, site work, relationships, forms, appearance, and such other work as may be necessary. Schematic Design review comments provided by the Owner will be incorporated into the Design Development Documents prepared by the A/E.

3.2.2.2 ENERGY CONSERVATION

A/E will provide an evaluation of energy conservation alternative designs for a Project and will assist with State Energy Conservation Office (SECO) forms as needed.

3.2.2.3 COST ESTIMATES

A/E will prepare a Cost Estimate that includes a ten percent (10%) construction contingency as described in Paragraph 5.4 If the Cost Estimate exceeds the CONSTRUCTION COST, as described in Paragraph 5.1, A/E will consult with Owner to identify potential modifications that would result in a Cost Estimate within the established CONSTRUCTION COST defined in the ACTIVATION. Approved modifications will be incorporated into the Construction Documents submittal at no cost to the Owner.

3.2.2.4 SUBMITTALS

A/E will submit the Design Development documents and the Cost Estimate to the Owner, attend a document review meeting at the Project site and obtain the Owner's written approval of the Design Development Documents and Cost Estimate before proceeding to the next phase.

3.2.2.5 INFECTION CONTROLS

A/E will prepare an INFECTION CONTROL PLAN for the Project outlining the required construction and procedures necessary to provide any affected facilities and residents with protection against odor, vapor, dust and other contaminants according to the *Guidelines for Infection Control for Construction and Renovation Projects*. The Owner will assist the A/E with required phasing and existing building functions and requirements.

3.2.3 CONSTRUCTION DOCUMENTS PHASE

A/E will provide Construction Document Phase services as identified below when phase is included in the ACTIVATION.

3.2.3.1 DELIVERABLES

Based upon the approved Design Development documents and any adjustment to the CONSTRUCTION COST authorized by the Owner, A/E will prepare the Construction Documents, setting forth in detail the work required to construct the Project, consisting of drawings and specifications, including but not limited to the architectural, structural, mechanical, electrical, plumbing, fire protection, service connected equipment, geotechnical soils report and site work, as well as all other necessary information to complete the Project. Design development review comments provided by the Owner will be incorporated into the Construction Documents by the A/E.

3.2.3.2 SPECIAL CONDITIONS

A/E will develop Special Conditions that are specific to the construction of the Project including but not limited to lists of required submittals, close out documents, warranties, material and quantities the Contractor is to provide to the facility. The A/E will include the Special Conditions in the specifications.

3.2.3.3 PROHIBITED MATERIALS

A/E will not specify materials that contain asbestos, asbestos products, PCBs, CFCs, or lead based paint, and will include a statement of prohibition in the specifications for the Project.

3.2.3.4 COORDINATION

A/E will coordinate the Construction Documents with the Owner's representative regarding materials, equipment, methods of construction, and the form and manner in which the work is set forth in the Construction Documents. If requested by the Owner, the A/E will prepare the Construction Documents in such a manner as to allow for the awarding of separate construction contracts for the various phases of the work. When additional work is requested by the Owner for separate contracts, the A/E fee will be amended through written authorization by the Owner for this extra work, when required.

3.2.3.4.1 The Owner may require that the Construction Documents, produced by a Consultant (whether one or more) under separate contract with the Owner, be included as part of the Project bid documents. A/E will at no cost to the Owner receive and incorporate any other Consultant's construction documents with the A/E's Construction Documents to create a single set of Project bid documents.

The other Consultant's scope of work will be included in the Contractor's proposal form as directed by the Owner. A/E will have no responsibility or liability for the contents or quality of construction documents produced by a Consultant (whether one or more) under separate contract with the Owner. Additional reproduction costs for any other Consultant's construction documents will be reimbursed to A/E in accordance with Subparagraph 3.4.3.1.

3.2.3.5 COST ESTIMATE

3.2.3.5.1 A/E will prepare a Cost Estimate with a five percent (5%) construction contingency as described in Paragraph 5.4. If Cost Estimate exceeds the CONSTRUCTION COST, as described in Paragraph 5.1, A/E will consult with Owner to identify potential modifications that would result in a base bid package within the established CONSTRUCTION COST defined in the ACTIVATION, or as approved by the Owner. The A/E will incorporate approved modifications to the Cost Estimate into the Construction Documents submittal at no cost to the Owner.

3.2.3.6 BIDDING PREPARATION

A/E will assist the Owner in the development and preparation of bidding information, proposal forms, and documents as necessary to bid the Project.

3.2.3.7 FILING

A/E will be responsible for filing the required documents (including drawings and specifications) with federal authorities, other state agencies, or local municipalities as required in Subparagraph 3.5.4.2.

3.2.3.8 SUBMITTALS

A/E will submit the Construction Documents and the Cost Estimate to the Owner, attend a document review meeting at the Project site, obtain the Owner's written approval of the Construction Documents and Cost Estimate, and incorporate all Owner review comments into the Construction Documents by the A/E before proceeding to the next phase.

3.2.4 BIDDING PHASE

A/E will provide Bidding Phase services and identified below when phase is included in the ACTIVATION.

3.2.4.1 TASKS

A/E will assist the Owner in obtaining bids from Contractors, including the distribution of bidding documents (as described in Subparagraph 3.4.3.2), addenda, and other items as required. A/E will clarify all questions regarding the Construction Documents and issue written clarification as required by the Owner. All comments and responses to such inquiries will be routed by A/E as directed by Owner in accordance with procurement rules and regulations. A/E will assist the Owner in advertising the Project to potential bidders, including directly contacting and informing potential bidders of upcoming bids and bid openings. A/E will attend a pre-bid conference at the Project site, analyze bids, and recommend in writing the award of the construction contract or contracts as appropriate.

3.2.4.2 CONSTRUCTION DOCUMENTS REVISIONS

A/E will revise the Construction Documents to bring the Project within the CONSTRUCTION COST without additional charge to the Owner if (a) the lowest bona fide bid received exceeds the CONSTRUCTION COST as stated in the ACTIVATION, or as approved by the Owner, and (b) the Owner determines the bids are not acceptable and the Project must be re-bid. A/E will perform all services identified in Subparagraph 3.2.4.1 during the re-bid without additional charge to the Owner.

3.2.4.3 BIDDING LOG

A/E will maintain a plan distribution log indicating the number of plans, to whom plans are distributed, and dates for all BIDDING DOCUMENTS distributed during the Bidding, and Re-bidding Phase. A/E will provide a copy of the final plan distribution log to the Owner at the completion of the Bidding Phase, if required by the Owner.

3.2.5 CONSTRUCTION ADMINISTRATION PHASE

When required by the ACTIVATION, the A/E will provide Construction Administration Phase service and as identified below when phase is included in the ACTIVATION.

3.2.5.1 COORDINATION

When required by the ACTIVATION, A/E will participate, along with its Consultants in a Partnering Session with Contractor, Owner, and facility staff prior to start of construction.

3.2.5.2 PRECONSTRUCTION CONFERENCE

A/E will attend and participate in the preconstruction conference at the Project site.

3.2.5.3 TASKS

A/E will provide staff for the Project who are knowledgeable about the scope and requirements of the Project, and are experienced in performing construction administration services to the satisfaction of the Owner as described in the *Architectural/Engineering Guidelines*, *Health and Human Services Commission Maintenance and Construction,* dated March 2014 and the current *Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions, version 2.2,* for HHSC Maintenance and Construction. A/E will perform all required tasks including but not limited to (a) inspecting the construction of the work to the extent needed to ascertain whether the work is being executed in conformity with the Contract Documents and directions; (b) reviewing and processing shop drawings and submittals; (c) reviewing schedule of values and construction schedule, (d) making recommendations on materials and equipment; checking and reporting on Contractor's proposals in connection with changes in the construction contract; (e) certifying completeness and accuracy of construction voucher; and (f) preparing change request documents as requested by the Owner.

3.2.5.4 CONFORMANCE TO CONTRACT DOCUMENTS

A/E will use normal professional skills in execution of the assignment covered by this Agreement to determine compliance based on information, beliefs and professional judgment that the work complies to the best of A/E's knowledge with the Contract Documents with written notification to the Owner. A/E will not be responsible or liable in any degree for the Contractor's failure to perform the construction work in accordance with the Contract Documents but during visits to the site and on the basis of the A/E's on-site inspections as an experienced and qualified design professional, A/E will be responsible for keeping the Owner informed of the extent of the progress of the work and will advise the Owner in writing of defects and deficiencies in the work of the Contractor and/or items not in compliance with the Contract Documents that are discovered by the A/E or otherwise brought to the A/E's attention. The A/E will provide a recommendation to the Owner for the correction, removal, or replacement of such defective or noncompliant work.

3.2.5.4.1 A/E will not be responsible for or have authority over the Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs in connection with the work. A/E will not be

responsible for any failure of the Contractor to comply with laws and regulations applicable to furnishing and performing the work.

3.2.5.5 REQUEST FOR INFORMATION

A/E will promptly issue the A/E's Supplemental Instructions in response to any Request for Information (RFI) submitted by the Contractor to avoid delay in the progress of the work, not later than seven (7) calendar days after the date request received, and will provide appropriate information to clarify the issue or a solution that is acceptable to the Owner. If the RFI does not contain sufficient information to clearly identify the issue and requested information, A/E will submit a written request for the needed additional information from the Contractor.

3.2.5.6 SUBMITTALS

A/E will promptly review the Contractor's submittals and provide a written response to avoid delay in the progress of the work, not later than ten (10) calendar days from the date the submittal is received.

3.2.5.6.1 A/E will review the Contractor's submittals to verify they contain an appropriate statement from the manufacturer documenting that any substances, as described in Subparagraph 3.5.15 are not contained in any suspect materials to be incorporated in the Project. If a submittal for a suspect material does not contain such a statement, A/E will request additional documentation such as additional manufacturer's documents, safety data sheets (SDS), laboratory test results, or other appropriate documentation to verify and document that such applicable substances are not contained. A/E will not approve the submittal of any suspect material until the Contractor has provided appropriate documentation. At the completion of construction, A/E will submit to the Owner a signed written certification that all products incorporated in the construction as part of the Project do not contain asbestos, polychlorinated biphenyls also known as PCBs, Chlorofluorocarbons also known as CFCs, or lead-based paint.

3.2.5.7 CONSTRUCTION VOUCHERS

A/E will be responsible for verification of the Contractor's monthly voucher, determination of the Contractor's progress based on the approved construction schedule, and verification that the Contractor's construction schedule has been updated to reflect actual progress.

3.2.5.7.1 At each monthly Construction Voucher meeting, A/E will verify the Contractor is maintaining a marked-up set of as-

builts based on changes made during the construction process. The record drawing conditions noted in Subparagraph 3.2.5.12 will be based on the as-built prints, drawings, and other data furnished by the Contractor to the A/E and which the A/E considers significant.

3.2.5.8 PROGRESS REPORTS

A/E will coordinate observations of the work with the Owner's representatives where practical; however, this does not diminish the A/E's responsibilities to inspect the work in progress. A/E will prepare a written status report of all Project conferences, meetings and on-site observations made by the A/E and/or its Consultants and submit to the Owner. The reports will contain all pertinent information, including items that need correction and all instructions given at the job site. A/E will deliver reports to the Owner's office within seven (7) calendar days after the conference, meeting, or site observation date.

3.2.5.9 CONSULTANT VERIFICATION

A/E will arrange with its Consultants to provide written notification through the A/E to the Owner, to the best of the A/E's knowledge, of conformance of the work to Drawings and Specifications for all architectural and engineering work, including, but not limited to geotechnical, drainage, finish grades, site work, structure, mechanical, electrical and plumbing, and fire protection systems.

3.2.5.10 CHANGE ORDERS

A/E will promptly review proposed change requests and unilateral change authorizations for accuracy and compliance with the Texas *Uniform General Conditions for Construction Contracts with HHSC Supplementary Conditions, version 2.2.*

3.2.5.11 SUBSTANTIAL COMPLETION

A/E will conduct a Substantial Completion inspection performed by the appropriate members of A/E's staff and Consultants as described in the Texas *Uniform General Conditions for Construction Contracts with HHSC Supplementary Conditions, version 2.2*, upon receipt of written notification by the Contractor that the work has been substantially completed. As a result of this inspection, A/E will prepare a punch list of items to be corrected prior to final inspection, including a list of required closeout documents, as described in the *Architectural/Engineering Guidelines*, *Health and Human Services Commission Maintenance and Construction* dated March 2014, to the certification of Substantial Completion

3.2.5.12 FINAL COMPLETION

After the Contractor has performed the required corrections on the Substantial Completion Punch list and notified the A/E in writing that the work is ready for Final Inspection, A/E will notify the Owner that the Project is ready for Final Inspection. A/E will accompany the Owner on the Final Inspection to ascertain that the work has been completed in accordance with the Contract Documents. As a result of the Final Inspection, A/E will prepare a list of items to be corrected or completed before the work will be accepted (Final Punchlist) and submit it to the Contractor. A/E will inspect all warranties, guarantees, bonds, equipment operating instructions, as-builts, non-asbestos certification and similar required materials and documents to ascertain that all such materials and documents have been received and meet the requirements of the Construction Documents. After the Contractor has corrected and completed all items on the Final Punchlist and notified the A/E in writing, A/E will accompany the Owner and inspect the work to verify all work is complete. After determining that all requirements of the Contract Documents have been met, A/E will certify in writing to the Owner and approve the Contractor's Final Application for Payment.

3.2.5.13 CLOSE OUT SUBMITTALS

At the completion or termination of services performed by the A/E for all Projects that includes construction and prior to the request for final payment, A/E will incorporate all as-built changes into the record drawings to show actual conditions, including change order items.

3.2.5.13.1 A/E will submit to Owner two (2) compact discs (CDs) or memory sticks each containing a complete set of CAD electronic drawings and complete specifications in Adobe Acrobat (PDF) format including but not limited to architectural, structural, mechanical, electrical, plumbing, fire protection systems, and site utility work, which will become the property of the Owner.

3.2.5.13.2 A/E will submit to Owner two (2) complete sets of full-sized drawing prints and printed specifications and addenda.

3.2.5.13.3 A/E will deliver to Owner all required closeout documents within thirty (30) calendar days of receipt of Contractor closeout documents and prior to final payment to A/E.

3.2.5.14 CONTINUOUS FIELD SUPERVISION

A/E will provide a qualified A/E representative to perform continuous field supervision of the Project work when deemed necessary by the Owner. The service of such supervisory personnel will be a Supplemental Service as described by Paragraph 3.3.

3.3 SUPPLEMENTAL SERVICES

Supplemental services consist of authorized services in addition to Basic Services described in Paragraph 3.2 and approved by the Owner by written ACTIVATION or Amendment.

3.3.1 SURVEY

A/E will conduct a survey or study to obtain detailed information (i.e. existing condition assessments, maintenance and operation recommendations, repair specifications, etc.) in addition to that required in Paragraph 3.2.1.1, as defined by the Owner.

3.3.1.1 A/E will prepare a written report documenting the findings and include recommendations for corrective actions or upgrades and a budgetary cost estimate for each recommendation.

3.3.1.2 A/E will submit the survey report to the Owner, attend a review meeting at the Project site, incorporate changes resulting from review comments, submit a Final Report, and obtain the Owner's written approval of the work.

3.3.2 PROGRAMMING

A/E will conduct Programming services 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

3.3.2.1 A/E will prepare a written report documenting the findings, including but not limited to diagrams, relationship studies, cost estimates, and size requirements.

3.3.2.2 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.

3.3.2.2.1 A/E will recommend to the Owner the appropriate Supplemental Services as required to complete the Project.

3.4 DOCUMENTS

3.4.1 PRINTING

A/E will provide all reports, documents, and drawings for any survey, study, or programming services. A/E will include in its fee, the cost of all printing and reproduction costs as required for these services, including the final number of reports for the Owner as identified in the ACTIVATION.

3.4.2 REPRODUCTIONS

A/E will include in its Basic Services fee, the cost of reproducing all reports, documents and drawings through the approval of the Construction Document

Phase, including the number of sets prescribed in the ACTIVATION for Owner review.

3.4.2.1 A/E will furnish the Owner with three (3) complete sets of BID DOCUMENTS at the completion of the Construction Documents Phase, as part of the total number of documents required in Subparagraph 3.4.2 and included in the Basic Services fee for each Project.

3.4.2.2 A/E will pay for the cost of all record drawings (prints, copies, and electronic delivery)

3.4.2.3 At the completion or termination of services performed by the A/E for each Project that includes drawings but does not include construction, A/E will pay for and furnish to the Owner a complete set of electronic CAD drawings in conformance with the current *Architectural/Engineering Guidelines*, *Health and Human Services Commission Maintenance and Construction.*

3.4.3 BIDDING DOCUMENTS

In addition to the sets described in Subparagraph 3.4.2, the A/E will pay for the cost of reproducing the number of bid documents sets prescribed in the ACTIVATION. If additional bid document sets are needed, A/E will obtain three (3) unit price bids for printing services, utilizing the least costly in its Supplemental Services proposal. Reimbursement to the A/E for such services will be at cost.

3.4.3.1 A/E will receive approval from the Owner, by amendment to the ACTIVATION, prior to printing any additional bid document set. Unit prices included in the proposal will be the basis for calculating the reimbursement costs.

3.4.3.2 A/E will provide sets of Construction Documents to construction plan rooms (such as AGC, HUB plan rooms and the like, if available) and to Contractors for the preparation of their bids. A/E will provide documents to plan rooms without the payment of a deposit from the construction plan rooms. The A/E may request a refundable deposit from the Contractor for each set of printed Construction Documents requested, with the amount of deposit based upon the unit prices described in the Contractor's proposal. A/E will maintain a plan distribution log. A/E will return all refundable deposits for plans returned in useable condition. All returned sets of plans will become property of the Owner for use by the Contractor awarded the Project.

3.4.3.3

3.4.4 REBIDDING

A/E will pay for the cost of reproducing all required revised plans, specifications, and addenda for re-bidding, in the event that the lowest bona fide bid received exceeds the CONSTRUCTION COST, equivalent to the number of sets prescribed in the ACTIVATION of final plans, specifications, and addenda.

3.5 A/E'S RESPONSIBILITIES

3.5.1 PROJECT MANAGER

A/E will designate an A/E Project Manager, who must be approved by Owner, as the contact person with specific authority to supervise and direct the duties and responsibilities of A/E, on behalf of A/E pursuant to the terms and conditions of this Agreement, and who will have decision making authority to bind A/E to the professional services of this Agreement.

3.5.2 CONSULTANTS

A/E's Basic Services will include all necessary architectural, roofing, civil engineering, structural engineering, mechanical/electrical/plumbing engineering, and fire protection engineering services required for all design and construction phases of the Project. A/E will strive to utilize the services of the Consultants previously presented to the Owner for these services, for the current agreement period of service. A/E will notify the Owner in writing of a change in the Consultants, provided that any change must result in the engagement of Consultants having equal or better qualifications.

3.5.3 SUPPLEMENTAL SERVICES

When required by the Project or requested by the Owner, A/E will obtain and include a Supplemental Services proposal for surveying, geotechnical services, including required technical reporting, borings and soil analysis necessary, or Consultants, to complete the Project as described in the ACTIVATION.

3.5.4 CONFORMANCE

Unless otherwise directed in writing by the Owner, A/E will be responsible for conformance with all applicable provisions of the current *Texas Uniform General Conditions for Construction Contracts and HHSC Supplementary General Conditions.*

3.5.4.1 A/E will be responsible for conformance with all applicable requirements and provisions of the statutes, Codes, and Standards as identified in (a) the current *Architectural/Engineering Guidelines, HHSC Maintenance and Construction;* (b) the *Comprehensive Accreditation Manual for Hospitals* (applicable to state hospitals) as published by the Joint Commission; (c) *Title 26 Texas Administrative*

Code, Chapter 551 for Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions, Subchapters C, D, and F, as adopted by the HHSC (applicable to state supported living centers); and (d) the *Intermediate Care Facilities for Individuals with an Intellectual Disability, also known as ICF/IID, Regulations* as published by the Centers for Medicare and Medicaid Services (applicable to state supported living centers).

3.5.4.2 If federal authorities, or other state agencies require the review of any documents concerning the Project, the A/E will make necessary cooperative presentations. 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.

3.5.5 DELAYS

A/E will comply with the approved A/E Services Schedule included in the ACTIVATION to avoid delay in the progress of the work. If a delay is foreseen by A/E, then A/E will notify the Owner in writing. The Owner has the right to extend the Schedule for service delivery if A/E provides reasons acceptable to the Owner. The A/E must keep the Owner advised at all times of the status of service delivery on each Project.

3.5.6 DESIGN CALCULATIONS

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. 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.

3.5.7 PROJECTS AFFECTING ENERGY AND WATER CONSUMPTION

A/E will be responsible for conformance with the applicable provisions of the current *State Energy Conservation Office Energy and Water Efficiency Guidelines for Buildings and Equipment at Texas State Facilities*.

3.5.7.1 Prior to construction for major new construction or renovations, A/E will submit an Energy and /or Water Conservation Design Standard Compliance Certification to the Owner and the State Energy Conservation Office verifying that the construction complies with the requirements of ASHRAE/IESNA Standard 90.1-2016 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. A/E may alternatively use the 2015 International Energy Conservation Code as published by the International Code Council.

3.5.7.2 For low-rise residential buildings, the A/E must comply with the International Energy Conservation Code – 2015 (IECC), of the International Code Council as adopted by the State Energy Conservation Office. A major Energy and Water renovation project is a building renovation or improvement where the implementation cost associated with energy or water efficiency improvements is $2 million or more, based on the initial engineering cost estimate.

3.5.7.2.1 The *Water Conservation Design Standards* also apply to replacing existing equipment, making modifications to existing systems, or purchasing equipment that equals more than half the original purchase price of the equipment. The Standards should be used for upgrading existing equipment that works but is nearing the end of its life expectancy. A water compliance certification form is also required for buildings greater than 10,000 square feet.

3.5.7.3 A/E will consult with the Owner on Project properties and characteristics pertaining to potential energy savings and required forms. A/E will complete the Energy and/or Water Savings Retrofit forms provided by the State Energy Conservation Office for all required work, including chillers, roofing, boilers, controls, window replacements, and related items.

3.5.7.4 A/E will prepare and provide to Owner a written evaluation of alternative energy and energy-efficient architectural or engineering designs for major renovations for which the construction involves installing or replacing all or part of an energy system, energy source, or energy-consuming equipment, or will affect the energy-efficiency of the building.

3.5.7.5 The above-mentioned evaluation provided by A/E must be in accordance with Sections 2166.401, 2166.403, and 2166.408, Texas Government Code and must include information about the economic and environmental impact of various conventional energy-efficient architectural or engineering designs as well as alternative energy-efficient designs, including an evaluation of both initial and life-cycle costing. The evaluation also must identify the best architectural and engineering design for the Project considering both economic and environmental costs and benefits.

3.5.7.6 A/E will submit the written evaluation along with a recommendation of the most feasible design to the Owner. A/E will submit a compliance certification to the Owner and the State Energy Conservation Office stating that the construction complies with the alternative energy and energy-efficient architectural and engineering design evaluation requirements.

3.5.8 REBATES

A/E will assist the Owner in determining electrical and water rebates available from the facility service providers based upon the scope of the Project improvements, by obtaining and evaluating rebate information from the service providers. If rebates are available, A/E will assist the Owner in obtaining the rebates by providing required calculations and information.

3.5.9 REGISTRATIONS

A/E will maintain all State of Texas certifications or registrations required by law to remain in good standing in its profession or professions during the term of this Agreement and will provide a copy of same to the Owner for the A/E of Record for each Project. A/E will inform the Owner immediately of any changes to such certifications or registrations during the term of this Agreement.

3.5.10 CHILD SUPPORT

As provided by Texas Family Code, Section 231.006, a child support obligor, who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25% is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. Under Section 231.006, the A/E hereby certifies that the individual or business entity named in this Agreement is not ineligible to receive the payments specified in this Agreement and acknowledges that this Agreement may be terminated, and payment may be withheld if this certification is inaccurate.

3.5.11 INSURANCE

3.5.11.1 General Insurance Requirements

3.5.11.1.1 A/E shall carry insurance in the types and amounts indicated in this Contract for the duration of the Contract. The insurance shall be evidenced by delivery to Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, Owner, and/or its agents, shall be entitled to receive, without expense, copies of the policies and all endorsements.

3.5.11.1.2 A/E shall update or renew all expired policies prior to submission of invoices or applications for payment for authorized Contract services. Failure to timely update or renew policies is grounds for Owner's withholding of Contract payments until copies of renewal or updated policies are provided.

3.5.11.1.3 A/E shall provide and maintain all required insurance coverages with at least the minimum amounts required throughout the life of the Contract.

3.5.11.1.4 Failure to maintain insurance coverage, as required, is grounds for suspension of work for cause.

3.5.11.1.5 A/E shall deliver to Owner true and complete copies of insurance certificates and corresponding policy endorsements within (10) calendar days of the award of the first ACTIVATION hereunder.

3.5.11.1.6 No failure of Owner to demand A/E's full compliance with these insurance requirements or to identify a deficiency in compliance shall be construed as a waiver of A/E's obligation to maintain such insurance or Owner's rights to enforce same.

3.5.11.1.7 The insurance and insurance limits required herein shall not be deemed as a limitation on A/E's liability under this Contract.

3.5.11.1.8 The insurance coverage and limits established below shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect A/E or Owner. Owner reserves all rights to pursue A/E for costs and other damages that may exceed insurance coverage, and pursue any other remedy provided to Owner by this Contract or law.

3.5.11.1.9 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company or similar rating company or otherwise acceptable to Owner.

3.5.11.2 Policies must include the following clauses, as applicable:

3.5.11.2.1 This insurance shall not be canceled, materially changed, or non-renewed except after at least thirty (30) days' written notice has been given to Owner.

3.5.11.2.2 It is agreed that A/E's insurance shall be deemed primary with respect to any insurance or self-insurance carried by Owner for liability arising out of operations under the Contract. Owner, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under the Contract. The additional insured status must cover

completed operations as well. This is not applicable to workers' compensation policies.

3.5.11.2.3 A waiver of subrogation in favor of Owner shall be provided in all policies.

3.5.11.2.4 Without limiting any of the other obligations or liabilities of A/E, A/E shall require each Subcontractor and Consultant performing work under the Contract to maintain, at the Subcontractor's and Consultant's own expense, during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above.

3.5.11.2.5 As an alternative, A/E may include its Subcontractors and Consultants as additional insureds on its own coverage as prescribed under these requirements. A/E's certificate of insurance shall note in such event that Subcontractors and Consultants are included as additional insureds and that A/E agrees to provide workers' compensation for Subcontractors and Consultants and their respective employees. A/E shall obtain and monitor the certificates of insurance from each Subcontractor and Consultant in order to assure compliance with the insurance requirements. A/E must retain the certificates of insurance for the duration of the Contract plus seven (7) years and shall be responsible for enforcing these insurance requirements among its Subcontractors and Consultants. Owner shall be entitled, upon request and without expense, to receive copies of these certificates.

3.5.11.3 Specific Insurance Coverage Required.

3.5.11.3.1 **Workers' Compensation and Employer's Liability.** Workers' compensation insurance with limits as required by the **Texas Workers' Compensation Act**, with the policy endorsed to provide a waiver of subrogation in favor of Owner, and employer's liability insurance of not less than:

$1,000,000 each accident;
$1,000,000 disease each employee; and
$1,000,000 disease policy limit.

Workers' compensation insurance coverage must be provided for all workers at all tier levels and meet the statutory requirements of the Texas Labor Code.

3.5.11.3.2 **Commercial General Liability Insurance,** including premises, operations, independent contractor's liability, products and completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring A/E's liability for bodily injury (including death) and property damage with a minimum limit of:

$1,000,000 per occurrence;
$2,000,000 general aggregate;
$5,000 Medical Expense each person;
$1,000,000 Personal Injury and Advertising Liability;
$2,000,000 products and completed operations aggregate; and,
$50,000 Damage to Premises Rented to You.

As with all other policies required herein, coverage shall be on an "occurrence" basis.

The term "You" as referenced in Subsection above, means the A/E.

3.5.11.3.3 **Comprehensive Automobile Liability Insurance**, covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of $1,000,000 per accident. No aggregate shall be permitted for this type of coverage.

3.5.11.3.4 **Professional Liability Insurance**. A/E shall obtain, pay for and maintain professional liability errors and omissions insurance during the Contract term, insuring A/E for an amount of not less than $1,000,000.

This Section 3.5.11 exclusively governs the insurance requirements under this Contract and supersedes Article 5 of the Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions, Version 2.2 (attached hereto as Attachment E), entitled "Bonds and Insurance".

3.5.12 ERRORS AND OMISSIONS

Although the Owner acknowledges that the A/E services may not be free of negligence, A/E shall strive for exercising reasonable professional judgment, skills, and expertise in providing services free of negligence, errors and omissions, and untimely performance of services.

3.5.12.1 A/E is responsible for correcting any error or omission in drawings, specifications, design, or other services furnished by the firm at no

cost to the Owner. Owner reviews, approvals, acceptance of work, or payments for work do not absolve the A/E from responsibility.

3.5.12.2 To protect the Owner from any unreasonable financial burden due to A/E negligence, A/E will be responsible for "additional costs", but not "normal costs", as follows:

3.5.12.2.1 "Normal costs" are defined as the construction costs incurred by the Owner to accomplish an improvement had the improvement been included in the original scope of work for the construction contract, as reasonably determined by the Owner.

3.5.12.2.2 "Additional costs" are defined as the construction costs incurred by the Owner that are over and above the "normal costs," including but not limited to the removal of previously accomplished work, correcting previously accomplished work, cost premiums, restocking costs, and similar costs.

3.5.13 WORKERS' COMPENSATION INSURANCE

As stated above, A/E must be in compliance with State law regarding Workers' Compensation Insurance or must provide Workers' Compensation Insurance for all employees who provide services pursuant to this Agreement. A/E will provide written proof to the Owner, along with proof that such insurance remains in effect during the term of this Agreement. The Owner may withhold payments otherwise payable under this Agreement until the A/E furnishes such proof of insurance.

3.5.14 Historically Underutilized Businesses

In accordance with the Texas Government Code ("TGC"), Sections 2161.181-182 and Texas Administrative Code ("TAC") Title 34, Part 1, Chapter 20, Subchapter D, §§ 20.281-298, HHSC shall make a Good Faith Effort to utilize HUBs in agreements or contracts for general services, construction services, professional and consulting services, and commodities. The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the following HUB utilization goals as specified in 34 TAC § 20.284.

3.5.14.1 If subcontracting opportunities are probable, any contracts for professional services with an expected value of $100,000 or more must contain language stating that probability and must require a HUB Subcontracting Plan (HSP), as required by the HHSC's *Request for Qualifications*, Section *5.2, Historically Underutilized Business Participation*.

3.5.14.2 The purpose of the HUB Program is to promote equal business opportunities for economically disadvantaged persons (as defined by TGC §2161) to contract with the State of Texas in accordance with

the goals specified in the State of Texas Disparity Study. The HUB goals in accordance with TAC §20.284 are: 11.2% for heavy construction other than building contracts; 21.1% for all building construction, including general contractors and operative builders contracts; 32.9% for all special trade construction contracts; 23.7% for professional services contracts; 26% for all other services contracts; and 21.1% for commodities contracts.

3.5.14.3 **The Texas Health and Human Services Commission and Owner Agency have determined that subcontracting opportunities are probable under this Agreement.** The A/E is required to submit a HUB Subcontracting Plan for each of the ACTIVATIONS regardless of its HUB status. The goods and/or services that have been identified as probable subcontracting opportunities under this Agreement are classified under "Professional Services" and the HUB participation goal is 23.7%. **FAILURE TO FULLY COMPLY WITH THE POLICY ON THE UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESS AND/OR SUBMIT A SUBCONTRACTING PLAN WILL RESULT IN THE A/E'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND IT WILL NOT BE CONSIDERED FOR AWARD**.

3.5.14.3.1 To search for potential HUB vendors who may perform subcontracting opportunities, the A/E may refer to the State of Texas Centralized Master Bidders List (CMBL) and the HUB Directory, which are found at https://comptroller.texas.gov/purchasing/vendor/cmbl/ . In addition, notice of subcontracting opportunities may be sent to minority and women trade organizations or development centers listed at www.cpa.state.tx.us/procurement/prog/hub/mwb-links-1/. The preferable method of notification will be in writing and should include, as applicable, the scope of services; the location to review scope of services; information about insurance requirements; information about required qualifications; and the name of a contact person.

3.5.14.3.2 For each new ACTIVATION issued under this Agreement, the Architect/Engineer shall submit a Historically Underutilized Business ("**HUB**") Subcontracting Plan ("**HSP**") to the HHSC HUB Office, regardless of whether the Architect/Engineer is self-performing or subcontracting any portion of the work under the project(s), and regardless of the total value of all activation(s) under the Agreement. The HSP reporting form is currently available at: https://comptroller.texas.gov/purchasing/vendor/hub/forms.php#hsp.

3.5.14.3.3 The Architect/Engineer shall submit a revised and/or updated final HSP within 10 business days of each ACTIVATION award to the HHSC HUB Office via email: hhschub@hhs.texas.gov or other designated method by the HHSC HUB Office. Any revisions by the Architect/Engineer to a HSP (e.g., adding or removing identified subcontractors) must be pre-approved by the HHSC HUB Office, and the Architect/Engineer must provide proper documentation to support the change.

3.5.14.3.4 For all ACTIVATION awards under this Agreement, the **Architect/Engineer** shall report the identity and amount paid to each subcontractor, whether HUB or not. The Architect/Engineer shall include this information on the Prime Contractor's monthly Progress Assessment Report ("**PAR**") form and submit with each invoice or application for payment to HHSC. If no subcontractors are utilized during the billing period, then the **Architect/Engineer** will insert "Self Performing" on the PAR; provided, however, if the Architect/Engineer has identified any subcontractors in the final HSP submitted for the ACTIVATION (see the section above), then all of those identified subcontractors must be listed on the PAR (even if paid $0), unless the **Architect/Engineer** amends or updates the final HSP for the ACTIVATION to add/edit/remove identified subcontractors.

3.5.15 TOXIC SUBSTANCES

If the presence of existing asbestos, asbestos products, PCBs, CFCs, lead-based paint, other toxic substances, mold, or other microbial are discovered, A/E will notify the Owner in writing immediately. A/E will have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form, unless otherwise agreed to by both Parties.

3.5.16 MEETING MINUTES

A/E will prepare detailed written minutes of the proceeding at all Project meetings attended by A/E and/or its Consultants and will submit to those written minutes to the Owner's office within seven (7) calendar days following the date of the meeting.

3.5.17 STANDARD OF CARE

A/E agrees and acknowledges that Owner is entering into this Agreement

in reliance on A/E's represented professional abilities with respect to performing A/E's services, duties, and obligations under this Agreement. A/E shall perform its Services consistent with the standard of care set forth in the Contract Affirmations for State Architectural/Engineering and Construction Projects, attached as Attachment A. There are no obligations, commitments, or impediments of any kind known to the A/E that will limit or prevent performance by A/E of its services. 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.

A/E shall at all times provide a sufficient number of qualified personnel to accomplish all services within the time limits set forth in the schedule.

3.5.18 COMPLIANCE WITH LAWS

Without waiving any more specific provision herein, A/E shall endeavor to perform the A/E Services 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 over the Project.

3.5.19 EXISTING CONDITIONS

A/E shall use reasonable efforts to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to A/E by Owner, or any other party, that A/E uses for the Project.

3.5.20 CORRECTION OF WORK

A/E's services shall be reasonably accurate and free from material errors or omissions. Upon notice, A/E shall promptly correct any known or discovered error, omission, or other defect without any additional cost or expense to Owner.

3.5.21 PHASING

The A/E shall not proceed beyond any previously authorized phase of the work for a project unless authorized by the Owner in writing, except at the A/E's own financial risk. Applicable phases of the scope of work shall be identified in the ACTIVATION.

3.5.22 DOCUMENTATION

The A/E shall fully document its project activities, in drawings, reports or other methods as appropriate to the scope of work and as identified in the ACTIVATION. The A/E shall bear the cost of providing all plans, specifications and other documents used by the A/E and its consultants.

ARTICLE 4. THE OWNER'S RESPONSIBILITIES

4.1 OWNER-PROVIDED INFORMATION

Owner will provide information to A/E as to the requirements for each Project and the procedures to be followed.

4.1.1 Upon request of the A/E and when in the possession of the Owner, the Owner will provide to the A/E a CAD file of each site and building floor plan included in the Project scope and as described in the ACTIVATION. The Owner will transmit this information, compatible with the current version of AutoCAD in use by the Owner.

4.1.2 When required for each Project and requested by the A/E, Owner will provide a complete and accurate survey of the site showing grades; lines of streets and other physical improvements; boundaries and contours of the land; location of trees; and information as to sewer, gas and electrical lines and services. When recommended in writing by the A/E, the Owner will obtain test borings and laboratory analyses of soil and foundation conditions, flow testing of the water supply, and other required testing.

4.2 ADDITIONAL CONSULTANTS

When required for each Project, Owner will contract under separate agreement for environmental services for hazardous materials abatement to be included in the bidding documents. The Owner agrees that the A/E will not be liable for the services provided by the A/E and/or other Consultants retained by Owner under this Paragraph 4.2.

4.3 REVIEW COMMENTS

The Owner will examine documents submitted by the A/E and promptly render decisions in writing pertaining thereto to avoid unreasonable delay in the progress of the A/E's work.

4.4 BOILER PLATE

Prior to each ACTIVATION, the Owner will furnish the A/E with one (1) copy of the Owner's current *Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary Conditions,* applicable special conditions, necessary forms, and prevailing wage rates for inclusion in the Specifications for each Project.

4.5 PROJECT MANAGER

The Owner will assign to each Project a representative who will be a member of the Owner’s staff. The A/E will be informed of the involvement and duties of the Owner’s staff, and the A/E will be required to cooperate with the Owner’s staff.

ARTICLE 5. CONSTRUCTION COST

5.1 DEFINITION

CONSTRUCTION COST means the total Construction Cost to the Owner for the Project scope and budget, as quantified in the ACTIVATION. The CONSTRUCTION COST does not include A/E fees, Special Consultant fees, or the cost of any furniture and/or equipment not specified in the Construction Documents.

5.2 LIMITS

The CONSTRUCTION COST will not exceed the amount stated in the written ACTIVATION unless that amount is changed by the Owner with written amendment to the ACTIVATION; and will be the basis for determining the A/E fee on change orders.

5.3 CHANGES

CONSTRUCTION COST will include any authorized changes as described in Paragraph 6.3.

5.4 COST ESTIMATE

A statement of probable CONSTRUCTION COST is hereinafter referred to as "COST ESTIMATE." If the Cost Estimate, including stated contingencies, exceeds the CONSTRUCTION COST stated in Paragraph 5.1, the Owner will determine if the CONSTRUCTION COST in the ACTIVATION should be amended and the A/E will revise the documents to bring the Project within the CONSTRUCTION COST without additional cost to the Owner.

ARTICLE 6. A/E'S PROFESSIONAL FEE

6.1 COMPENSATION

A/E agrees to perform professional services for each Project as hereinafter set forth and as described in the ACTIVATION, in writing by the Owner. In accordance with the established appropriations authority, the Owner agrees to pay the A/E as compensation for services for each Project when activated in writing by the Owner a fee in accordance with the following requirements:

6.1.1 A fixed fee for a survey, study, or Programming services as described in Paragraphs 3.1 and 3.3.

6.1.2 The CONSTRUCTION COST in the ACTIVATION will be the basis for negotiation of the A/E fixed fee for Basic Services.

6.1.2.1 The A/E Fee includes all printing costs through Construction Administration, including the Owner's copies of final bid documents and required closeout documents, as described in Subparagraph 3.2.5.13.

6.1.2.2 No additional fees will be paid to A/E for transportation, living expenses, premium for overtime, telephones, fax, in-house expenses,

computer costs, delivery services, or other costs not specified as reimbursable in this Agreement.

6.2 RATES

Upon Owner's request, the A/E will provide a detailed written breakdown specifying positions and hourly rates of the A/E fee.

6.3 CHANGE ORDERS

For the purpose of computing A/E fees on approved change orders, fee increases will be calculated based on the change order cost for work associated with the A/E's scope of work as described in Paragraph 3.1 utilizing the percentage of fixed fee as stated in the ACTIVATION. This percentage will be applied to all future contract sum changes for A/E increased compensation only when the A/E has provided additional services and/or there has been an addition to the A/E's scope of work directly related to the additional construction cost per the applicable Base A/E Agreement and *Architectural/Engineering Guidelines*, *Health and Human Services Commission Maintenance and Construction* dated March 2014. There will be no change to A/E compensation if there is no A/E additional services or increase in A/E scope directly related to additional construction cost.

6.4 ABANDONED WORK

For the purpose of computing the A/E fee at any stage prior to completion or upon abandonment of a Project or a portion of a Project by the Owner, the A/E fee will be calculated based on the percentage of work completed utilizing the percentage of fixed fee stated in the ACTIVATION.

6.5 SUPPLEMENTAL SERVICES

A fixed fee for Supplemental Services, as defined by Paragraph 3.3, will be calculated as follows:

6.5.1 A multiple of 1.05 times the approved amount by the Consultant to the A/E as described in the ACTIVATION for Consultants, such as Registered Accessibility Specialists, geotechnical services, surveying or testing. Upon Owner's request, the A/E will provide a detailed written breakdown specifying positions and hourly rates of the A/E's Consultant's fees.

6.5.2 Supplemental Services must be approved by the Owner by ACTIVATION or Amendment.

6.5.3 Fees incurred by A/E in securing all planning permits and approvals from federal and other state agencies, as described by Subparagraph 3.5.4.2. Fee will be at cost.

6.6 REPEATED USE

When one building design is used in two or more locations within the same Project, the fee payable to the A/E will be calculated in accordance with the following:

6.6.1 For the first building, a fee calculated according to the Fee Schedule set forth in Subparagraph 6.1.2.

6.6.2 For the second and any subsequent buildings utilizing the same design, the fixed fee will be reduced by thirty-five percent (35%). Such fee will be compensation for revising the Construction Documents to include changes required by site conditions including foundation redesign, partition changes, mechanical and electrical changes, other changes as required, and inspection of the construction.

6.7 ERRORS AND OMISSIONS

A fee will not be paid to the A/E for increases in the CONSTRUCTION COST resulting from A/E's negligence, A/E's errors and omissions, or A/E's untimely performance of services as described in Subparagraph 3.5.12.

ARTICLE 7. PAYMENTS TO THE A/E

7.1 PAYMENTS

Payments will be made to the A/E in proportion to the services performed to increase its compensation for services as prescribed in the ACTIVATION.

7.1.1 Payments for Basic Services will be made for each phase when accepted and written approval is provided by Owner. Each phase of work is provided in the Architectural/Engineering Guidelines, Health and Human Services Commission Maintenance and Construction dated March 2014.

7.1.2 Payment for Supplemental Services will be made when service is complete and written acceptance is provided by the Owner.

7.1.3 Payments for Bidding Phase will be made following execution of a construction contract.

7.1.4 Payments for Construction Administration Phase will be made monthly based upon the percentage of the Construction Contract completed, less a retainage as described in Paragraph 7.5 for closeout documents.

7.2 DEDUCTIONS

No deduction will be made from the A/E's compensation on account of penalty, liquidated damages, or other sum withheld from payments to the Contractor or Contractors.

7.3 ALTERNATES

If the Owner should authorize the A/E (by written consent), as an Additional or Supplemental Service, to include alternates in the Construction Documents that would cause the Project to exceed the CONSTRUCTION COST, then the Owner will pay the A/E an additional fee calculated as if the CONSTRUCTION COST had been so increased and in accordance with the percentages as stated in the ACTIVATION based on such increase in cost. This section does not apply to alternates that are a part of the A/E's Basic Services deliverables.

7.4 ABANDONED WORK

If the Project is abandoned by the Owner in part or in whole, the Owner will pay the A/E for the services performed up to the date of abandonment in accordance with the procedures stated in Subparagraph 6.4 of the Agreement and percentages as stated in the ACTIVATION.

7.5 RETAINAGE

A/E retainage, as described in the ACTIVATION, will be withheld until all required closeout documents are received and approved by the Owner.

7.6 LATE INVOICES

Should the A/E fail to submit to the Owner a final invoice for services within sixty (60) calendar days of Owner's approval of all closeout documents, or the date of written approval by the Owner for services exclusive of construction, the A/E waives the unpaid amount of its fee and the Owner may issue a unilateral Amendment to the ACTIVATION reducing the total A/E fee for the Project to the amount paid to date.

7.7 EXCEPTIONS TO PAYMENT:

Regardless of any other provision of this Agreement, Owner shall not be obligated to make any disputed payment requested by A/E under this Agreement under any of the following conditions:

7.7.1 A/E is in breach or default under this Agreement or any ACTIVATION issued under this Agreement;

7.7.2 The requested payment includes services not performed in accordance with this Agreement or the ACTIVATION; provided, however, payment shall be made for the undisputed balance of the services that are performed in accordance with this Agreement or ACTIVATION;

7.7.3 A/E has failed to make payments prompt to consultants or other third parties used in connection with the services for which Owner has made payment to A/E (under this subsection, promptly shall mean within (10) business days of the receipt of Owner payment);

7.7.4 A/E becomes insolvent, makes a general assignment of its rights or obligations for the benefit of its creditors, or voluntarily or involuntarily files for protection under

the bankruptcy laws (subject to any order from the bankruptcy court with jurisdiction over the A/E bankruptcy debtor); or

7.7.5 If Owner, in its good faith judgment, determines that the balance of unpaid compensation is insufficient to complete the services required under this Agreement.

7.8 PARTIAL PAYMENT

No partial payment by Owner shall constitute or be construed as final acceptance or approval of any services provided by A/E or as a release of any of A/E's obligations or liabilities with respect to such services.

7.9 SUBCONTRACTOR PAYMENT

A/E shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.

7.10 FINAL PAYMENT AND RELEASE

The acceptance by A/E or A/E's successors of final payment under this Agreement, shall constitute a full and complete release of Owner from any and all known and unknown claims, demands, and causes of action whatsoever that A/E or A/E's successors may have against Owner pursuant to this Agreement except those alleged claims specifically identified in writing by A/E as unsettled at the time of the final request for payment.

ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS

8.1 All documents prepared by the A/E are instruments of service and shall remain the property of the A/E. The Owner shall be permitted to retain copies, including reproducible copies, of all documents prepared by the A/E for information and reference in connection with the Owner's use and occupancy of the Project. Owner shall have an irrevocable, fully paid-up perpetual license and right, which shall survive the termination of this Agreement, to use the documents, including the originals thereof, and the ideas and designs contained therein, for any purpose.

8.2 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 9. ENTIRE AGREEMENT

9.1 DOCUMENTS

This Agreement is composed of the following documents, which will be incorporated into and made part of this Agreement for all purposes. If a conflict exists among any one or more of the named documents composing the Agreement, then the documents will be construed according to the following precedence, from highest precedence to lowest precedence:

9.1.1 This Architectural/Engineering (A/E) Agreement;

9.1.2 Any ACTIVATION executed under this Agreement (in the form of Attachment C);

9.1.3 *The Architectural/Engineering Guidelines*, *Health and Human Services Commission Maintenance and Construction* dated March 2014, attached hereto as Attachment D;

9.1.4 The provisions applicable to Architects/Engineers in the *Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions, Version 2.2*, attached hereto as Attachment E;

9.1.5 *Contract Affirmations for State Architectural/Engineering and Construction Projects,* attached hereto as Attachment A, and

9.1.6 The *HHSC Uniform Contract Terms & Conditions, Vendor Version 3.2,* attached hereto as Attachment B.

9.2 ENTIRE AGREEMENT

This Agreement, including all incorporated documents, constitutes the entire agreement of the Parties and supersedes any prior understandings or oral or written agreements between the Owner and A/E. No modification, alteration, or waiver of any term, covenant, or condition of this Agreement and any incorporated documents will be valid unless in writing and executed by the authorized representatives of Owner and the A/E.

ARTICLE 10. AMENDMENTS

10.1 AMENDMENTS

This Agreement, including any ACTIVATION, may only be changed by written amendment executed by the authorized representatives of Owner and A/E.

ARTICLE 11. DEFAULT

11.1 ACTIONS

A/E will comply with and act in good faith in the performance of all provisions of this Agreement, including any ACTIVATION, and any amendments to either. In addition to breaches, or actions or omissions of default, set forth in the *HHSC Uniform Contract Terms & Conditions, Vendor Version 3.2* (Attachment B hereto), A/E acknowledges that any of the following actions by the A/E will be considered a default(s) under this Agreement and Owner will have the right to pursue the remedies and sanctions described herein or otherwise available in law or equity:

11.1.1 Submitting falsified documents or fraudulent invoicing or making false representations or certifications relating to this Agreement or any ACTIVATION;

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

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

11.1.3.1 Failing to abide by applicable Federal and state statutes, such as those regarding handicapped persons and civil rights;

11.1.3.2 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;

11.1.3.3 Failing to notify and reimburse the Owner for services the Owner paid for when the A/E received reimbursement from a liable third party;

11.1.3.4 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;

11.1.3.5 Violating the Texas Health and Safety Code, §531.001, et seq. provisions applicable to the Agreement or any rule or regulation issued under those statutes;

11.1.3.6 Failing to correct contract performance deficiencies following written notification from the Owner;

11.1.3.7 Failing to repay to Owner any identified overpayment or other erroneous payments within thirty (30) calendar days of overpayment, or within thirty (30) calendar 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

11.1.3.8 Failing to perform or comply with any covenant, term or condition of this Agreement.

11.2 REMEDIES AND SANCTIONS

The Owner may impose remedies and sanctions as described in this section or in *HHSC Uniform Contract Terms & Conditions, Vendor Version 3.2,* Attachment B for A/E's default under this Agreement. The Owner at its discretion may impose as many remedies and sanctions as appropriate on a case-by-case basis.

11.2.1 Informal Remedies:

11.2.1.1 Requesting A/E to respond in writing to identified problems;

11.2.1.2 Conducting more frequent or more extensive monitoring of A/E

services;

11.2.1.3 Requiring A/E to obtain additional training or technical assistance; and

11.2.1.4 Requiring A/E to submit additional or more detailed financial and/or programmatic reports.

11.2.2 Sanctions:

11.2.2.1 Terminating the Agreement and any ACTIVATION;

11.2.2.2 Withholding of contract payments;

11.2.2.3 Recouping contract payments from A/E; or

11.2.2.4 Reducing the ACTIVATION amount.

11.3 NOTIFICATIONS

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

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

11.3.1.1 A copy of the letter from the Owner notifying A/E of the sanction;

11.3.1.2 A description of each act that is the basis for the sanction;

11.3.1.3 The basis for A/E's belief that the Owner's imposition of the sanction is in error;

11.3.1.4 Any documentation in support of A/E's position; and

11.3.1.5 A statement and authorities in support of A/E's position.

11.3.2 On or before ten (10) calendar days following receipt of the A/E's request for review, the Owner will appoint a reviewer(s), who will review the A/E's request, who may permit or require additional information and who may uphold or overturn the imposition of the sanction. The decision of the reviewer(s) will be in writing and will contain the reason for the decision and the remedial action, if any. The reviewer(s) will send copies of the decision to Owner and A/E by any verifiable means. The decision of the reviewer(s) is final.

ARTICLE 12. TERMINATION OF THE AGREEMENT

12.1 TERMINATION

This Agreement, including any ACTIVATION, may be terminated as follows and as provided in any Attachment hereto:

12.1.1 Fourteen (14) calendar days following written notification of termination by the Owner to the A/E, if the A/E should fail to perform as determined by the Owner in accordance with the terms of this Agreement and/or an ACTIVATION through no fault of the Owner;

12.1.2 At any time by mutual written agreement between the Owner and A/E;

12.1.3 No earlier than thirty (30) calendar days following written notification of termination by the Owner to the A/E, for convenience; and

12.1.4 Immediately following written notification by the Owner of termination to the A/E, in the event adequate state funds are not appropriated.

12.1.5 In the event of termination not the fault of the A/E, the A/E shall be entitled to compensation for all services satisfactorily performed to the termination date, together with approved Reimbursable Expenses then due, provided A/E delivers to Owner statements, accounts, reports and other materials as required for payment along with all reports, documents and other materials prepared by A/E prior to termination.

12.2 CONTINUED RESPONSIBLITIES

Following written notification of intent to terminate and until the date of termination, A/E will continue to have the responsibility to provide services under this Agreement, including any ACTIVATION. The Owner will continue to have the responsibility to pay for services properly performed prior to the termination date.

12.3 OBLIGATIONS

Immediately following termination, the Owner and A/E will be discharged from any further obligation created under the terms of this Agreement, including any ACTIVATION, except for the equitable settlement of the respective obligations incurred prior to termination. Termination does not, however, constitute a waiver of any remedies for breach of this Agreement or any ACTIVATION. In addition, the obligations of the A/E to indemnify and hold harmless, retain records and maintain the confidentiality of information will survive this Agreement.

ARTICLE 13. INDEMNITY

A/E SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND OWNER, AND THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND

ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY

(1) ACTS OF NEGLIGENCE,

(2) INTENTIONAL TORTS,

(3) WILLFUL MISCONDUCT,

(4) PERSONAL INJURY OR DAMAGE TO PROPERTY, OR

(5) OMISSIONS OTHERWISE RELATED TO A/E'S PERFORMANCE, AND

(6) ANY FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE A/E OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR CONSULTANTS UNDER CONTRACT TO A/E, OR ANY OTHER ENTITY OVER WHICH THE A/E EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT.

THE DEFENSE SHALL BE COORDINATED BY THE A/E WITH OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. A/E AND OWNER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE A/E TO INDEMNIFY OR HOLD HARMLESS THE STATE OR OWNER FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF OWNER OR ITS EMPLOYEES.

ARTICLE 14. DISPUTE RESOLUTION

14.1 PROCESS

Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections 14.1.1 to 14.1.4 shall be used by the parties to attempt to resolve all disputes arising under this contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections 14.1.1 to 14.1.4.

14.1.1 Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 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 Texas Government Code, Chapter 2260, Subchapter B. 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.

14.1.2 The chief administrative officer, or if designated in the Contract or ACTIVATION, 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 Texas Government Code, Chapter 2260, Section 2260.052.

14.1.3 If the negotiation under paragraph 14.1.2 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.

14.1.4 If a claim is not entirely resolved under paragraph 14.1.2 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.

14.1.5 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.

14.1.6 Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection 14.1.1 – 14.1.4 above is a condition precedent to the Owner:

14.1.6.1 filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or

14.1.6.2 initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.

14.2 A/E PERFORMANCE

Neither the occurrence of an event nor the pendency of a claim constitutes grounds for

the suspension of performance by the A/E, in whole or in part.

14.3 SANCTIONS

Imposition of sanctions under this Agreement does not authorize the use of the Dispute Resolution process under Chapter 2260.

ARTICLE 15. SUCCESSORS AND ASSIGNS

15.1 BINDING

The Owner and the A/E each binds itself, its partners, successors, assigns, and legal representatives to the other Party to this Agreement and to the partners, successors, assigns, and legal representative of such other Party in respect to all covenants and conditions of this Agreement. Neither the Owner nor the A/E will assign, sublet or transfer its interest in this Agreement without the written consent of the other Party.

ARTICLE 16. SEVERABILITY

16.1 SERVABLITLY

In the event any provision of this Agreement becomes unenforceable or void, all other provisions of this Agreement will remain in effect.

ARTICLE 17. RENEGOTIATION

17.1 TERMS

In the event the A/E is required to comply with an addition to or a change in any law, rule, regulation, directive, standard, settlement, or resolution pursuant to this Agreement, and the addition or change results in a material change in A/E's rights or obligations under this Agreement or places a significant financial burden on the A/E, the A/E and the Owner may renegotiate the terms of this Agreement that are affected by such an addition or change.

ARTICLE 18. NO WAIVER

18.1 NO WAIVER

In no event will any payment by the Owner to A/E or any delay, act, or omission of the Owner constitute or be construed in any way to be a waiver by the Owner of any breach or default of this Agreement that may then or subsequently be committed by A/E. 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, as such rights, powers, privileges and remedies are specifically preserved. No employee or agent of the Owner may waive the effect of this provision.

ARTICLE 19. GOVERNING LAW and VENUE

19.1 TEXAS LAW

The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.

ARTICLE 20. CONTRACT REPRESENTATIVES AND NOTICE REQUIREMENTS

20.1 REPRESENTATIVES AND NOTICES

20.1.1 The following will act as the representative authorized to administer activities under this Contract on behalf of its respective Party.

HHSC Contract Representative	**A/E Contract Representative**
[Contract Representative Name]	[Contract Representative Name]
[Agency Name]	[A/E Name]
[Address]	[Address]
[City, State ZIP]	[City, State ZIP]
[Email Address]	[Email Address]

20.1.2 All notices given by A/E shall be in writing, include the Contract number, comply with all terms and conditions of the Contract, and be delivered to the Owner's Contract Representative identified above.

20.1.3 A/E shall send legal notices (including notices of breach, default, alleged claims and demands, and notices related to the dispute resolution process herein) to Owner at the address below and provide a copy to the Owner's Contract Representative:

Health and Human Services Commission
Attn: Office of Chief Counsel
4900 N. Lamar Blvd.
Austin, Texas 78751

20.1.4 Notices given by Owner to A/E may be emailed, mailed or sent by common carrier. Email notices shall be deemed delivered when sent by Owner. Notices sent by mail shall be deemed delivered when deposited by the Owner in the United States mail, postage paid, certified, return receipt requested. Notices sent by common carrier shall be deemed delivered when deposited by the Owner with a common carrier, overnight, signature required.

20.1.5 Notices given by A/E to Owner shall be deemed delivered when received by Owner in accordance with this Article.

20.1.6 Either Party may change its Contract Representative or Legal Notice contact by providing written notice to the other Party.

ARTICLE 21. AUTHORITY TO BIND THE OWNER

21.1 AGREEMENT EXECUTION

This Agreement is not binding upon the Owner unless and until it has been executed by the Executive Commissioner of the HHSC or his or her designee.

ARTICLE 22. A/E'S AUTHORITY

22.1 REPRESENTATION AND WARRANTY

The person or persons signing and executing this Agreement, on behalf of the A/E, or representing themselves as signing and executing this Agreement on behalf of the A/E, represent and warrant that they have been fully authorized by the A/E to execute this Agreement on behalf of the A/E and to validly and legally bind the A/E to all the terms and provisions contained in this Agreement.

ARTICLE 23. MISCELLANEOUS PROVISIONS

23.1 ASSIGNMENT

A/E may not assign the contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without the prior written consent of the Owner, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void.

23.2 SURVIVABILITY

Expiration or Termination of this Contract for any reason does not release Contractor from any liability or obligation set forth in this Contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of this Contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

23.3 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.

ARTICLE 24. COUNTERPARTS AND ELECTRONIC SIGNATURES

24.1 MULTIPLE COUNTERPARTS AND UETA

Each Party agrees that this Agreement, as well as any amendments or activations thereto, may be executed by written or electronic signature and may be delivered in multiple counterparts by facsimile or other electronic transfer of an originally signed document, each of which will be as binding on the Party or Parties as an original document. The Parties each agree that this transaction and Agreement 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 Agreement 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.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the day and year indicated below by the Owner's signature.

OWNER:
TEXAS HEALTH AND HUMAN
SERVICES COMMISSION

By: _____

_____
Date Signed

A/E:
Name of A/E

By: _____

_____
Date Signed

_____
Registration/License No.

A/E Name:
A/E Address Name & #:
A/E City, State & Zip:
A/E Area & Phone #:

_____
Tax I.D. Number (to be filled in by A/E)