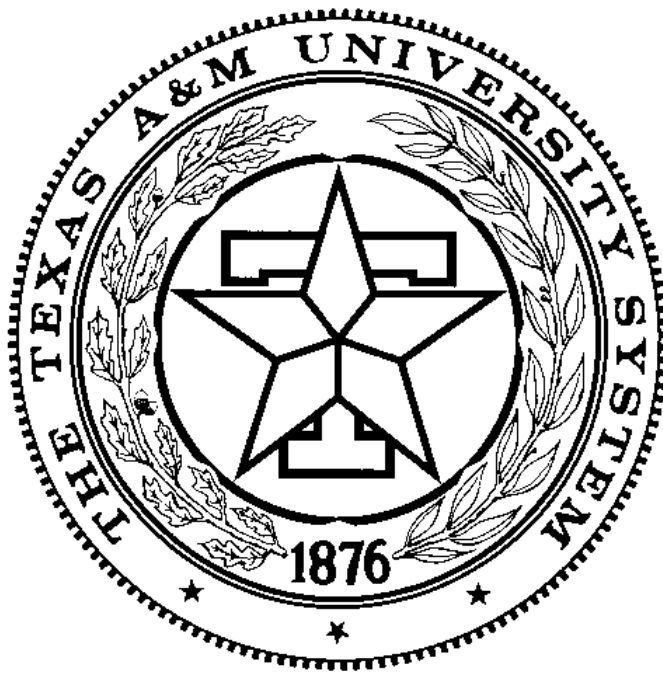


**REQUEST FOR QUALIFICATIONS
FOR
ARCHITECT/ENGINEER PROFESSIONAL SERVICES**

**SPORTS PERFORMANCE CENTER
TEXAS A&M UNIVERSITY
COLLEGE STATION TEXAS
PROJECT NO. 02-3098**

**DEADLINE FOR SUBMITTAL:
2:00 P.M., Friday, April 8, 2011**



Prepared By:
Dorothy L. Fojtik, Project Planner
The Texas A&M University System
Facilities Planning and Construction Department
200 Technology Way, Suite 1162
College Station, Texas 77845-3424
dlf@tamu.edu

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SECTION 1

GENERAL INFORMATION & REQUIREMENTS

1.1 General Information

Facilities Planning & Construction Department (FP&C) on behalf of the Board of Regents of The Texas A&M University System (Owner) and **Texas A&M University**, College Station, Texas, are soliciting statements of qualifications for selection of an Architect/Engineer firm for the **Sports Performance Center** (Project), in accordance with the terms, conditions, and requirements set forth in this Request for Qualifications (RFQ).

This Request for Qualifications is the first step in the process for selecting an Architect/Engineer firm. The RFQ provides the information necessary to prepare and submit Qualifications for consideration by the Owner. The Owner may select the top five (5) or more of the top ranked qualified respondents to present their qualifications during an interview.

1.2 Public Information

All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, *et seq.*) after a contract is awarded. The Owner strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of RFQ information.

1.3 Type of Contract

Any contract resulting from this solicitation will be in the form of the Owner's Standard Architect/Engineer Agreement.

1.4 Clarifications and Interpretations

Any clarifications or interpretations of this RFQ that materially affect or change its requirements will be posted by the Owner as an addendum on the Electronic State Business Daily website, <http://esbd.cpa.state.tx.us/>. It is the responsibility of all respondents to obtain this information in a timely manner. All such addenda issued by the Owner before the proposals are due shall become a part of the RFQ, and respondents shall acknowledge receipt of and incorporate each addendum in its response.

Respondents shall consider only those clarifications and interpretations that the Owner issues by addenda five (5) days prior to the submittal deadline. Interpretations or clarifications in any other form, including oral statements, will not be binding on the Owner and should not be relied on in preparing Qualifications.

1.5 Submission of Qualifications

1.5.1 Deadline: The Owner will receive Qualifications at or before the time described below.

2:00 P.M., Friday, April 8, 2011 CST

- 1.5.2 Submit **(6) six** identical bound copies of the Qualifications, one (1) copy of the Qualifications and HUB Subcontracting Plan in “pdf” format on a CD ROM or thumb drive and one (1) original of the HUB Subcontracting Plan (HSP) as a separate attachment to the Qualifications. The CD ROM copy should be labeled with the name of the proposing organization and **02-3098** directly on the CD ROM and placed in a sealed envelope with the name of the proposing organization written across the front and attached or affixed inside the front cover of the original response. All copies shall be submitted to:

Mr. Vergel L. Gay, Jr.
Chief Facilities Planning and Construction Officer
Facilities Planning and Construction
The Texas A&M University System
200 Technology Way, Suite 1162
College Station, Texas 77845-3424

- 1.5.3 Late received Qualifications will be returned to the respondent unopened.
- 1.5.4 The Owner will not acknowledge or receive Qualifications that are delivered by telephone, facsimile (fax), or electronic mail (e-mail).
- 1.5.5 Properly submitted Qualifications will not be returned to respondents.
- 1.5.6 Qualifications materials must be enclosed in a sealed envelope (box or container) addressed to the Point-of-Contact person; the package must clearly identify the submittal deadline, the RFQ number, and the name and return address of the respondent.

1.6 Point of Contact

The Owner designates the following person as its representative and Point-of-Contact for this RFQ. Respondents shall restrict all contact with the Owner and direct all questions regarding this RFQ to the Point-of-Contact person.

Dorothy L. Fojtik
Project Planner
The Texas A&M University System
Facilities Planning and Construction Department
200 Technology Way, Suite 1162
College Station, Texas 77845-3424
Fax: (979) 458-7020
E-mail: dlf@tamu.edu

1.7 Evaluation of Qualifications

The evaluation of the Qualifications shall be based on the requirements described in this RFQ. All properly submitted Qualifications will be reviewed and evaluated by the Owner. Qualifications shall not include any information regarding respondent’s fees, pricing, or other compensation.

1.8 Owner’s Reservation of Rights

The Owner may evaluate the Qualifications based on the anticipated completion of all or any portion of the Project. The Owner reserves the right to divide the Project into multiple parts, to reject any and all Qualifications and re-solicit for new Qualifications, or to reject any and all proposals and temporarily or permanently abandon the Project. Owner makes no representations, written or oral, that it will enter into any form of agreement with any respondent to this RFQ for any project and no such representation is intended or should be construed by the issuance of this RFQ.

1.9 Acceptance of Evaluation Methodology

By submitting its Qualifications in response to this RFQ, respondent accepts the evaluation process and acknowledges and accepts that determination of the “most qualified” firm(s) will require subjective judgments by the Owner.

1.10 No Reimbursement for Costs

Respondent acknowledges and accepts that any costs incurred from the respondent’s participation in this RFQ shall be at the sole risk and responsibility of the respondent.

1.11 Historically Underutilized Businesses’ Submittal Requirements

It is the policy of the State of Texas and the A&M System to encourage the use of Historically Underutilized Businesses (HUBs) in our prime contracts, subcontractors, and purchasing transactions. The goal of the HUB program is to promote equal access and equal opportunity in A&M System contracting and purchasing.

Subcontracting opportunities are anticipated for this RFQ for Architect/Engineer Professional Services and therefore a HUB Subcontracting Plan (HSP) is required. *Failure to submit a comprehensive, acceptable HUB Subcontracting Plan that identifies ALL subcontracting opportunities will be considered a material failure to comply with the requirements of the RFQ and will result in rejection of the submittal.*

Prepare the HUB Subcontracting Plan in accordance with the attached HUB Subcontracting Plan guide document and submit one copy to **Vergel Gay, Chief Facilities Planning and Construction Officer** at the address and by the submittal deadline given in Section 1.5.1 and 1.5.2 above. The HUB Plan shall be submitted as a separate bound document appropriately tabbed for easy reference.

For information regarding the Texas A&M University System HUB Program and HUB Subcontracting requirements, please contact Mr. Don Barwick, Manager, HUB and Procurement Programs, dbarwick@tamu.edu, (979) 458-6410 or Eddie Menchaca, Hub Coordinator, emenchaca@tamu.edu (979) 458-7029.

1.12 Certain Proposals and Contracts Prohibited

Under Section 2155.004, Texas Government Code, a state agency may not accept a proposal or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the proposal or contract is based. If a state agency determines that an individual or business entity holding a state contract was ineligible to have the contract accepted or awarded as described above, the state agency may immediately terminate the contract without

further obligation to the vendor. This section does not create a cause of action to contest a proposal or award of a state contract.

1.13 Required Notices of Workers' Compensation Insurance Coverage

Section 406.096, Texas Labor Code, and the rules of the Texas Workers' Compensation Commission, require workers' compensation insurance coverage for all persons providing services on a building or construction project for a governmental entity.

1.14 State Registration of Engineering Firms

Section 1001.405, Texas Occupations Code, provides that a business entity may not engage in the practice of engineering in this state unless the business entity is registered with the Texas Board of Professional Engineers. A business is defined as a sole proprietorship, firm, partnership, corporation or joint stock association.

SECTION 2

EXECUTIVE SUMMARY

2.1 Project Description, Scope and Budget

The Athletic Department wishes to embark on the design of the new Sports Performance Center. This center is needed to continue the further development of student athletes by giving them a state of the art facility. This football facility will house areas for weight training, speed enhancement and skill development. The facility will also house staff offices, a staff locker room and a second level viewing platform and/or Lettermen's Lounge. This facility may have covered outdoor seating at the second level to allow viewing of football practice for various groups. The building will be approximately 18,000 square feet.

The Sports Performance Center will be constructed on the Texas A&M University campus. Several possible locations exist, including the site located to the south of the existing H. R. "Bum" Bright Building and west of the existing KAMU TV Building, on the site of the former Omar Tennis Center, located on the Texas A&M University main campus, in College Station, Texas. The site is shown on the location map with this RFQ (Attachment B).

At this stage of development, the building is envisioned to be a pre-engineered structure with package chiller/boiler units for HVAC. The Sports Performance Center is envisioned to use complimentary brick and arches to the surrounding buildings, complying with the architectural standards of the university as set forth in the campus master plan. The building is desired to be a two-story volume structure with extensive use of natural lighting. The building is desired to have no columns in the main areas for lifting and workouts. Additional parking is desired to be part of this building development.

The ground floor of the building will have (4) staff offices with glass front windows that look into the weight areas. A carpeted conference room for (6) to (8) people needs to be located next to the staff offices. A staff locker room for (4) to (6) people shall include lockers, (2) showers and toilets. A storeroom will be needed to house nutritional supplements and supplies. The facility will need general public male and female restrooms on the lower level and an area for backpacks. A large video wall is envisioned very similar to the current Association of Former Students video wall.

The facility shall be divided into three segments. One segment for dumbbell use shall be covered in Infinity TPV rubber flooring or a comparable high quality sports flooring system. Segment two used primarily for weight racks and stations shall be covered in carpet squares. The third segment which will be used for performance equipment shall be covered in an artificial turf product. The entire facility shall have a state-of-the-art sound system that can be controlled from one of the staff offices.

A second level above the offices, locker rooms and storerooms is desired. This area may house a Lettermen's Lounge, (2) offices, storeroom, serving countertop, elevator and access to the outside tiered viewing seats.

A master plan for football is under development to propose the best location for this facility. At this time the location is projected to be the Omar Smith Tennis Courts. This area is currently being used for overflow, including that of the tennis courts and associated facilities.

All demolition, utility relocation and/or extensions and site development work required for the construction of a complete and functional facility will be included in this project.

The project design and construction process and requirements are set forth in the A&M System "Facility Design Guidelines" which can be accessed at <http://www.tamug.edu/offices/fpc/forms/> and the AE Services Agreement Contract, a sample of which is included with this RFQ. The design shall utilize Building Information Modeling (BIM) based design processes to produce a building information model(s) for this project and will comply with applicable State and Federal Laws.

All construction in this project will meet all applicable codes and standards including NFPA Life Safety Codes and Texas Accessibility Standards.

The project shall be designed based on sustainability requirements to meet LEED Certified rating as established by the U.S. Green Building Council. However, no certification will be sought.

The project will utilize the Construction Manager at Risk (CMAR) project delivery method. The successful AE team will be expected to work closely with the User in the pre-construction phase to develop a design that best meets their needs and is within the available budget.

The Planning Amount for this project is \$5,000,000. The Planning Amount includes an Amount Available for Construction Contract (AACC) of \$3,500,000. Fees, furnishings, other work, miscellaneous expenses, and contingencies make up the balance of the Planning Amount.

Texas A&M University System Facilities, Planning and Construction (FP&C) will develop a Program of Requirements for this project, complete with a cost estimate and a project schedule.

2.2 Project Planning Schedule *

Key Project planning schedule milestones are:

- | | |
|---------------------------|----------------|
| ▪ Issue DB RFQ | March 21, 2011 |
| ▪ RFQ Submittals Due | April 8, 2011 |
| ▪ Select Short-list Firms | April 13, 2011 |
| ▪ Interview CMAR Firms | April 20, 2011 |

▪ Interview AE Firms	April 21, 2011
▪ Chancellor Approval of AE & CMAR Selection	May 3, 2011
▪ BOR adds Project to Capital Plan	May 27, 2011
▪ AE & CMAR Contract signed	May 30, 2011
▪ Submit THECB Application	August 8, 2011
▪ GMP Due to Owner	September 1, 2011
▪ THECB Approval	September 20, 2011
▪ BOR GMP Approval	September 23, 2011
▪ Notice to Proceed for Construction	November 28, 2011
▪ Substantial Completion	August 15, 2012

*Discussion of the schedule will need to be reviewed and finalized at the kick off meeting with the user, CMAR, A/E and FP&C teams.

SECTION 3

REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS

Respondents shall carefully read the information contained in the following criteria and submit a complete statement of Qualifications to all questions in Section 3 formatted as directed in Section 4. Incomplete Qualifications will be considered non-responsive and subject to rejection.

Note: Information is also being sought at this stage on the consultants providing planning, and architectural and engineering design services for this project along with surveying, geotechnical, data/telecom and cost estimating services. The same information requested below for the Prime Firm is also requested for the named consultant firm(s) unless specifically noted otherwise.

3.1 CRITERIA ONE: RESPONDENT'S STATEMENT OF QUALIFICATIONS AND AVAILABILITY TO UNDERTAKE THE PROJECT (Maximum of two (2) printed pages per question)

- 3.1.1 Provide a statement of interest for the project including a narrative describing the Prime Firm's and consultant's unique qualifications as they pertain to this particular project.
- 3.1.2 Provide a statement on the availability and commitment of the Prime Firm and consultant's assigned principal(s) and professionals to undertake the project in accordance with the project planning schedule.
- 3.1.3 Provide a brief history of the Prime Firm and consultant(s) proposed for the project including when the firms were established, type of ownership and office locations. If more than one office is listed indicate the office that will manage the project. If the firm has changed name or ownership within the last three (3) years indicate the former name.
- 3.1.4 Provide a listing of number of professional staff by discipline and a listing of minority professionals by discipline located in the office that will manage the project.
- 3.1.5 Indicate the professional service fees received for contract work over the last three (3) years.
- 3.1.6 Provide an Organization Chart for the team proposed for the project.

- 3.1.7 Provide resumes of key personnel from the Prime Firm and consultants who will be assigned to this Project. Resumes limited to two (2) pages per person.

3.2 CRITERIA TWO: PRIME FIRM'S ABILITY TO PROVIDE SERVICES

- 3.2.1 Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
- 3.2.2 Provide any details of all past or pending litigation or claims filed against your company that would affect your company's performance under a Contract with the Owner.
- 3.2.3 Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.
- 3.2.4 Does any relationship exist by relative, business associate, capital funding agreement, or any other such kinship between your firm and any Owner employee, officer or Regent? If so, please explain.
- 3.2.5 Provide a claims history under professional malpractice insurance for the past five (5) years for the Prime Firm and any team members proposed to provide professional architectural or engineering services.

3.3 CRITERIA THREE: RESPONDENT'S PERFORMANCE ON PAST REPRESENTATIVE PROJECTS

- 3.3.1 List a maximum of five (5) projects for which you have provided services that are most related to this project. List the projects in order of priority, with the most relevant project listed first. For all consultants are named in the response indicate the projects they also worked on. Provide the following information for each project listed:

- Project name, location, contract delivery method, and description
- Color images (photographic or machine reproductions)
- Final Construction Cost, including Change Orders
- Final project size in gross square feet
- Type of construction (new, renovation, or expansion)
- Actual start and finish dates for design
- Actual Notice To Proceed and Substantial Completion dates for construction
- Description of professional services Prime Firm provided for the project
- Name of Project Manager (individual responsible to the Owner for the overall success of the project)
- Name of Project Architect (individual responsible for coordinating the day to day work)
- Name of Project Designer (individual responsible for design concepts)
- Consultants

References (for each project listed above, identify the following):

- The Owner's name and representative who served as the day-to-day liaison during the design and construction phases of the project, including telephone number
- Contractor's name and representative who served as the day-to-day liaison during the Preconstruction and/or construction phase of the project, including telephone number

- Length of business relationship with the Owner.

References shall be considered relevant based on specific project participation and experience with the Respondent. The Owner may contact references during any part of this process. The Owner reserves the right to contact any other references at any time during the RFQ process.

- 3.3.2 Identify a maximum of three (3) completed projects, of any type, for which the Prime Firm received an award for design excellence from a recognized organization and provide descriptive information for each.

3.4 CRITERIA FOUR: RESPONDENT'S PAST PERFORMANCE ON A&M SYSTEM PROJECTS

- 3.4.1 Identify and describe the Prime Firm's past experience on Texas A&M University System projects, up to a maximum of five (5) projects within the last five (5) years. For all consultants named in the response, indicate the projects they also worked on. Projects may repeat with Section 3.3 above.

If the Prime Firm has not previously provided services for The Texas A&M University System, then identify and describe the Prime Firm's past performance on projects for "major" institutions of higher education (or similar) within the last five (5) years.

In either case above, provide the following information for each project listed:

- Project name, location, contract delivery method, and description
- Color images (photographic or machine reproductions)
- Final Construction Cost, including Change Orders
- Final project size in gross square feet
- Type of construction (new, renovation, or expansion)
- Actual start and finish dates for design
- Actual Notice To Proceed and Substantial Completion dates for construction
- Description of professional services Prime Firm provided for the project
- Name of Project Manager (individual responsible to the Owner for the overall success of the project)
- Name of Project Architect (individual responsible for coordinating the day to day work)
- Name of Project Designer (individual responsible for design concepts)
- Consultants

3.5 CRITERIA FIVE: RESPONDENT'S KNOWLEDGE OF BEST PRACTICES

- 3.5.1 Describe the Prime Firm's design philosophy, design methodology, and its process for integrating institutional standards into design.
- 3.5.2 Describe the Prime Firm's quality assurance program explaining the method used and how the firm maintains quality control during the development of Construction Documents and quality assurance during the Construction phase of a project. Provide specific examples of how these techniques or procedures were used for any combination of three (3) projects listed in response to Criteria 3.4 and 3.5.
- 3.5.3 Describe your project team's demonstrated technical competence and management qualifications with institutional projects, particularly those for higher education.

- 3.5.4 The Owner has specific system design and construction standards and specification requirements for construction projects. Describe how you propose to incorporate these requirements into this project.
 - 3.5.5 Describe your firm's experience working with the Construction Manager-at-Risk (CMAR) project delivery method. Discuss your method of working with the contractor as a team member to deliver a Guaranteed Maximum Price (GMP) and to maintain the GMP throughout the design and construction process.
 - 3.5.6 Describe your cost estimating methods for the design and construction phases. How do you develop cost estimates and how often are they updated? For any combination of three (3) projects listed in response to Criteria 3.3 and 3.4, provide examples of how these techniques were used and what degree of accuracy was achieved.
 - 3.5.7 Describe the way in which your firm develops and maintains work schedules to coordinate with the Owner's project schedule. For any combination of three (3) projects listed in response to Criteria 3.3 and 3.4, provide examples of how these techniques were used.
 - 3.5.8 The Owner requires that the project be accomplished using a Building Information Model (BIM) software product. Describe your firm's and your major consultants' capabilities and experiences with BIM. Describe how coordination among your consultants not using BIM will be accomplished.
 - 3.5.9 Describe the types of records, reports, monitoring systems, and information management systems, which your firm used in the management of the projects listed above. Describe how you used these systems for any combination of three (3) projects listed in response to Criteria 3.3 and 3.4.
 - 3.5.10 Describe how you plan to ensure continuity of project objectives starting with design solution, moving through construction documents, and finishing with a constructed project that meets the Owner's requirements.
 - 3.5.11 Describe the project team's experience in sustainable design and improved indoor air quality.
 - 3.5.12 Describe the project team's approach to assuring timely completion of this project, including methods you will use for schedule recovery if necessary.
 - 3.5.13 Describe how you track Owner input and review comments on your design document submittals to confirm that they have been addressed. Provide examples of reports/logs used for tracking response to and closure on Owner comments.
- 3.6 CRITERIA SIX: RESPONDENT'S ABILITY TO IDENTIFY AND RESOLVE PROBLEMS ON PAST PROJECTS
- 3.6.1 Describe your understanding of the administrative challenges and opportunities associated with providing Design and Construction Administration services for The Texas A&M University System on this project, and your strategy for resolving these issues.
 - 3.6.2 What do you perceive are the critical issues for this project?

- 3.6.3 Understanding schedule limitations provide an analysis of the Owner's project planning schedule and describe how you plan to develop and communicate design, scope, and budget options in a form that will quickly facilitate the Owner's decision making.
- 3.6.4 For any three (3) of the projects listed in response to Criteria 3.3 and 3.4, describe any conflicts with the Owner, Consultants, Contractor, or subcontractors, and describe the methods your firm used to resolve those conflicts.
- 3.6.5 Provide examples of how the Respondent has creatively incorporated mechanical, electrical, and plumbing solutions in similar structures.

3.7 CRITERIA SEVEN: EXECUTION OF OFFER

NOTE TO RESPONDENTS: SUBMIT ENTIRE SECTION WITH RESPONSE.

This execution of offer must be completed, signed, and returned with the respondent's qualifications. Failure to complete, sign and return this execution of offer with the qualifications may result in rejection of the qualifications.

Signing a false statement may void the submitted qualifications or any agreements or other contractual arrangements, which may result from the submission of respondent's qualifications. A false certification shall be deemed a material breach of contract and, at owner's option, may result in termination of any resulting contract or purchase order.

Addenda Acknowledgment

Receipt is hereby acknowledged of the following addenda to this RFP by entering yes or no in space provided and indicating date acquired. Enter "0" if none received.

No. 1 _____ Date _____

No. 2 _____ Date _____

Representations

By signing below, Respondent represents and warrants that:

(i) the Qualifications and all statements and information prepared and submitted in response to this RFQ are current, complete, true and correct;

(ii) it is not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount trip, favor or service to a public servant in connection with the submitted Qualifications or any subsequent proposal. Failure to sign below, or signing a false statement, may void the Response or any resulting contracts at the Owner's option, and the Respondent may be removed from all future proposal lists at this state agency;

(iii) the individual signing this document and the documents made part of the RFQ is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract which may result from the submission of the Response;

(iv) no relationship, whether as a relative, business associate, by capital funding agreement or by any other such kinship exists between Respondent and an employee of The Texas A&M University System;

(v) Respondent has not been an employee of the A&M System within the immediate twelve (12) months prior to the RFQ response;

(vi) no compensation has been received for participation in the preparation of this RFQ (ref. Section 2155.004 Texas Government Code);

(vii) all services to be provided in response to this RFQ will meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health law (Public Law 91-596) and its regulations in effect as of the date of this solicitation;

(viii) Respondent complies with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action;

(ix) to the best of its knowledge, no member of the Board of Regents of The Texas A&M University System, or the Executive Officers of the Texas A&M University System or its member institutions or agencies, has a financial interest, directly or indirectly, in the Project; and

(x) each individual or business entity proposed by Respondent as a member of its team that will engage in the practice of engineering or architecture will be selected based on demonstrated competence and qualifications only.

By signing below, the Respondent hereby certifies as follows, and acknowledges that such certifications will be included in any resulting contract:

If the Respondent is subject to the Texas franchise tax, it is not currently delinquent in the payment of any franchise tax due under Chapter 171, Texas Tax Code, or is exempt from the payment of such taxes. A false certification may result in the Respondent's disqualification.

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

Submitted by:

(Company Name)

(Authorized Signature)

(Printed Name/Title)

(Date)

(Email)

STATE OF TEXAS

VIN No: _____

OR

FEI No: _____

If Sole Owner:

SS No: _____

If a Corporation:

State of Incorporation: _____

Charter No: _____

(Street Address)

(Mailing Address)

(City, State, Zip Code)

(Telephone Number)

(Facsimile Number)

SECTION 4

FORMAT FOR STATEMENT OF QUALIFICATIONS

4.1 GENERAL INSTRUCTIONS

- 4.1.1 Qualifications shall be prepared SIMPLY AND ECONOMICALLY, providing a straightforward, CONCISE description of the respondent's ability to meet the requirements of this RFQ. Emphasis shall be on the QUALITY, completeness, clarity of content, responsiveness to the requirements, and an understanding of Owner's needs.
- 4.1.2 Qualifications shall be a **MAXIMUM OF FIFTY (50)** PRINTED PAGES. The cover, table of contents, divider sheets, HUB Subcontracting Plan (Section 1.13), and Execution of Offer do not count as printed pages.
- 4.1.3 Respondents shall carefully read the information contained in this RFQ and submit a complete response to all requirements and questions as directed. Incomplete Qualifications will be considered non-responsive and subject to rejection.
- 4.1.4 Qualifications and any other information submitted by respondents in response to this RFQ shall become the property of the Owner.
- 4.1.5 The Owner will not compensate respondents for any expenses incurred in Qualifications preparation or for any presentations that may be made, unless agreed to in writing in advance or required by law. Respondents submit Qualifications at their own risk and expense.
- 4.1.6 Qualifications that are qualified with conditional clauses, alterations, items not called for in the RFQ documents, or irregularities of any kind are subject to rejection by the Owner, at its option.
- 4.1.7 The Owner makes no representations of any kind that an award will be made as a result of this RFQ, or subsequent RFP. The Owner reserves the right to accept or reject any or all Qualifications, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFQ when deemed to be in Owner's best interest.
- 4.1.8 Qualifications shall consist of answers to questions identified in Section 3 of the RFQ. It is not necessary to repeat the question in the Qualifications; however, it is essential to reference the question number with the corresponding answer.
- 4.1.9 Failure to comply with all requirements contained in this Request for Qualifications may result in the rejection of the Qualifications.

4.2 PAGE SIZE, BINDING, DIVIDERS, AND TABS:

- 4.2.1 Qualifications shall be printed on letter-size (8-1/2" x 11") paper and assembled with spiral-type bindings or staples. DO NOT USE METAL-RING HARD COVER BINDERS.
- 4.2.2 Additional attachments shall NOT be included with the Qualifications. Only the responses provided by the respondent to the questions identified in Section 3 of this RFQ will be used by the Owner for evaluation.

- 4.2.3 Separate and identify each criteria response to Section 3 of this RFQ by use of a divider sheet with an integral tab for ready reference.

4.3 TABLE OF CONTENTS:

- 4.3.1 Submittals shall include a “Table of Contents” and give page numbers for each part of the Qualifications.

4.4 PAGINATION:

- 4.4.1 Number all pages of the submittal sequentially using Arabic numerals (1, 2, 3, etc.); the Respondent is not required to number the pages of the HUB Subcontracting Plan.

Attachment A

AGREEMENT

BETWEEN

THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY

SYSTEM

AND

[NAME BOLD]

ARCHITECT/ENGINEER

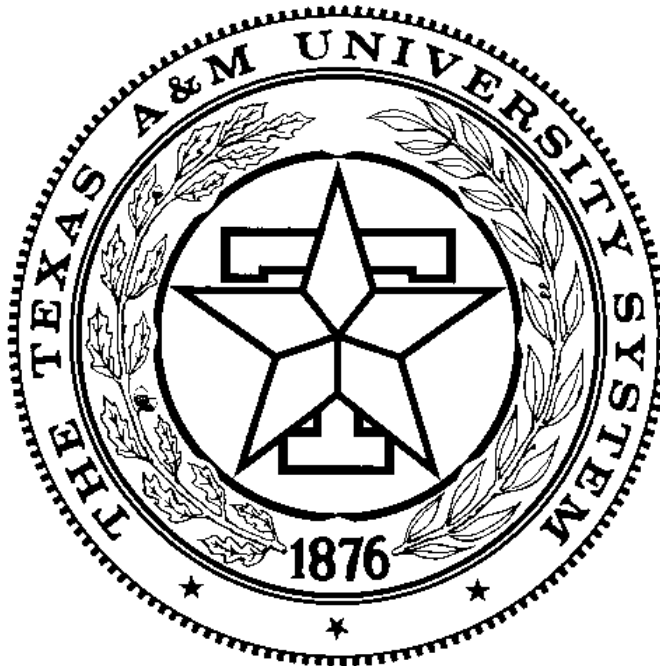


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**AGREEMENT
BETWEEN
THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY
SYSTEM
AND
[NAME BOLD],
ARCHITECT/ENGINEER**

This Agreement is effective as of [Date the Chief Facilities Planning and Construction Officer signs the Agreement] , 2011 (the “Effective Date”), by and between the **BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM** (“Owner”) and [Name], Architect/Engineer (the “Architect/Engineer” or “A/E”) for the: **Sports Performance Center** construction project (the “Project”).

Owner intends to construct the Project at Texas A&M University, College Station, Texas, for which, under a total cost allocation, [AACC Spelled out] and no/100 dollars (\$[AACC Numerals].00) is the Amount Available for the Construction Contract (“AACC”).

**Article 1
Architect/Engineer’s Services and Responsibilities**

The Architect/Engineer shall provide the usual and customary Basic Services necessary and reasonably inferable to complete the Project and each phase of the project described in Paragraphs 1.2 through 1.6 below, along with any Additional Services requested by the Owner.

1.1 Architect/Engineer’s Basic Services

1.1.1 Basic Services. The Architect/Engineer’s Basic Services include all disciplines identified in Article 14 and all related usual and customary design, consultant, and other services necessary and reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Owner’s requirements and the terms of this Agreement.

1.1.2 Reimbursable Services. Reimbursable Services are the services specifically identified in Paragraph 14.3 that are provided by the Architect/Engineer in conjunction with the delivery of Basic Services under this Agreement. Compensation for Reimbursable Services will be made when the services are complete.

1.1.3 The Program of Requirements (see Article 2) describes the intended project scope and character along with the anticipated Project Schedule and the Preliminary Project Cost. The Program of Requirements is incorporated herein by reference. It is the Architect/Engineer’s responsibility to review and understand the requirements of the Program of Requirements and to perform professional services so as to achieve those objectives.

1.1.4 The Amount Available for the Construction Contract (“AACC”) for this Project is specified in Article 15. The Architect/Engineer is responsible for managing the design of the Project so that the total construction cost does not exceed the Amount Available for the Construction Contract. Evaluations of the Owner’s budget for the Project and Estimated Construction Costs prepared by the Architect/Engineer represent the Architect/Engineer’s judgment as a design professional familiar with the construction industry. Bids or negotiated prices may vary from the Owner’s budget for the Project, or from the Estimated Construction Costs prepared or agreed to by the Architect/Engineer.

1.1.5 The Owner may require the Architect/Engineer to provide services for the Project in up to three packages. Each package shall have a unique AACC, which will be a part of the overall project AACC. The Architect/Engineer is responsible for managing the design of each package so that the total construction cost for such package does not exceed the AACC for that package. The Architect/Engineer is responsible for managing the design of the Project so that total contract costs of all packages do not exceed the Project’s overall AACC.

1.1.6 The Architect/Engineer shall manage the design of the Project to achieve the Program of Requirements’ objectives of scope and cost through completion and acceptance of the Construction Documents phase. The Architect/Engineer shall advise the Owner of any adjustments to the scope or quality of the Project necessary to comply with the Amount Available for the Construction Contract during design development as part of Basic Services.

1.1.7 The Architect/Engineer shall submit the names of all consultants, persons, or firms, that the Architect/Engineer proposes to use in the execution of its services and shall provide the Owner, upon request, with a fully executed copy of each contract or agreement that the Architect/Engineer enters into with any consultant. The Architect/Engineer is responsible for coordinating the work of all of its consultants such that their services are appropriate for and adequately incorporated into the design of the Project. The Owner reserves the right, in its sole discretion, to reject the employment by Architect/Engineer of any consultant for the Project to which Owner has a reasonable objection. Architect/Engineer, however, shall not be required to contract with any consultant to which it has a reasonable objection.

1.1.8 The Architect/Engineer shall pay for its consultants’ services out of its fees. The Owner is not responsible for any consultant fees or costs unless expressly agreed to in writing.

1.1.9 The Architect/Engineer agrees on allocating work to subcontractors (consultants) as listed (or indicated) on their HUB Subcontracting Plan, in accordance with The A&M System Policy on Historically Underutilized Businesses. No changes to the HUB Subcontracting Plan may be made unless approved in writing by the Owner. While this Agreement is in effect and until the expiration of one year after completion, the Owner may require information from the Architect/Engineer, and may conduct audits, to assure that the HUB Subcontracting Plan is followed.

1.1.10 The Architect/Engineer shall, consistent with the AACC design the Project to incorporate current systems technology as appropriate to the stated mission of the institution and the programmed functional activities. The technology shall be compatible with any existing facility and acceptable to the Owner.

1.1.11 The Architect/Engineer shall perform its services in accordance with the Owner furnished "Facility Design Guidelines", a digital copy of which has been provided to Architect/Engineer and is incorporated herein by reference.

1.1.12 The Architect/Engineer shall design the Project in accordance with the approved Campus Master Plan, a copy of which will be made available to Architect/Engineer.

1.1.13 Basic design services shall include incorporation of the provisions of the Energy Conservation Design Standard for New State Buildings as administered by the State Energy Conservation Office, State Comptroller's Office of the State of Texas. Architect/Engineer shall provide the Owner with a Statement of Compliance and associated compliance documentation as required.

1.1.14 The Architect/Engineer, as part of Basic Services, shall provide an economic evaluation for the potential of renewable energy applications pursuant to legislative requirements using RETScreen International Clean Energy Project Analysis software. Guidelines are available from the State Energy Conservation Office, State Comptroller's Office.

1.1.15 Basic design services shall include incorporation of the provisions of the Xeriscape Landscaping design requirements as adopted by the Texas Facilities Commission or its successor for Xeriscape landscaping on new construction projects, pursuant to Section 2166.404, *Texas Government Code*. Architect/Engineer shall provide site analysis and design to incorporate these provisions. A summary of the project requirements meeting these guidelines shall also be provided for the Design Development submittal package.

1.1.16 The Architect/Engineer, as a part of Basic Services, shall design the Project to meet or exceed LEED Silver as established by the U.S. Green Building Council. Any energy modeling and/or daylighting studies, as required for LEED Silver are included. If the Owner chooses to pursue certification, registration and documentation with the U.S. Green Building Council, any such services provided by the Architect/Engineer will be a Reimbursable Service. The LEED Green Building Rating System and other similar environmental guidelines (collectively "LEED") utilize certain design and usability recommendations on a project in order to promote an environmental friendly and energy efficient facility. In addressing these guidelines, the Architect/Engineer shall perform its services in accordance with that degree of skill and care ordinarily exercised by similarly situated members of the Architect/Engineer's profession involved in the design of similar projects in the same locale as the Project.

1.1.17 Architect/Engineer shall use reasonable care consistent with the foregoing standard in interpreting and designing in accordance with LEED. Architect/Engineer shall not be responsible for Contractor's failure to adhere to the Contract Documents and any applicable laws, codes and regulations incorporated therein, nor for any changes to the design made by the Owner without the direct participation and written approval of the Architect/Engineer.

1.1.18 The Architect/Engineer, as a part of Basic Services, shall provide life cycle cost analysis of major systems and materials to optimize the operating, maintenance and initial costs as well as to support Paragraph 1.1.16.

1.1.19 The Architect/Engineer, as part of Basic Services, shall engage a recognized and experienced construction cost estimating consultant acceptable to the Owner to prepare detailed Estimated Construction Costs of the Project in a form acceptable to the Owner following the Construction Specifications Institute (CSI) MasterFormat 2004 and UniFormat 98. Updated Estimates shall be included with the Plans and Specifications submitted for review at completion of the Schematic Design phase, Design Development phase and at the stages of completion of the Construction Documents required in Article 15. If the Estimated Construction Cost exceeds the Amount Available for the Construction Contract at any time, the Owner will determine whether to increase the Amount Available for the Construction Contract or require the Architect/Engineer to revise the Project scope or quality to comply with the Amount Available for the Construction Contract at no additional cost to Owner. Reductions in Project scope or quality are subject to Owner's review and approval. If the Estimated Construction Cost is below the Amount Available for the Construction Contract, the Owner and Architect/Engineer shall mutually agree on changes to the project scope or the Amount Available for the Construction Contract.

1.1.20 The Architect/Engineer shall submit documents to the Owner for review at completion of the Schematic Design and Design Development phases and at the stages of completion of the Construction Documents as described in Article 15. The Architect/Engineer shall incorporate into the documents such corrections and amendments as the Owner requests, unless the Architect/Engineer provides the Owner with the Architect/Engineer's reasonable objection to such corrections or amendments. The Architect/Engineer will be responsible for any damages incurred by the Owner to the extent they are found to be caused by Architect/Engineer's failure to incorporate requested corrections and amendments to the documents.

1.1.21 Owner will utilize a review and comment form to record all comments during the document reviews and will provide its review comments to Architect/Engineer. The Architect/Engineer shall provide a detailed written response to each of the Owner's review comments indicating where and how they have been addressed in the design documents. At each required document submittal stage, the Architect/Engineer shall include the completed comment form from the preceding submittal along with a cover letter signed by a firm principal affirming that the previous review comments have been fully addressed in the current submittal. Failure to respond to the previous comments or to provide the written affirmation may result in reduction or rejection of the Architect/Engineer's then current Statement for Architectural/Engineering Services until a proper response is obtained. Owner's approval of the revised drawing shall not be deemed to be an approval of any unlisted changes, and any costs or expense for any Architect/Engineer's additional services subsequently incurred for such unlisted changes shall be borne by Architect/Engineer.

1.1.22 The Architect/Engineer, as part of Basic Services, shall become sufficiently familiar with the existing facilities, systems and conditions at the Project site so that the proposed Project will properly interface functionally with them.

1.1.23 Architect/Engineer agrees and acknowledges that Owner is entering into this Agreement in reliance on Architect/Engineer's represented professional abilities with respect to performing Architect/Engineer's services, duties, and obligations under this Agreement.

Architect/Engineer agrees to use Architect/Engineer's professional efforts, skill, judgment, and abilities in performing Architect/Engineer's services. Architect/Engineer shall perform its services diligently and shall endeavor to further the interest of the Owner in accordance with Owner's requirements and procedures. Architect/Engineer shall perform its services in accordance with the usual and customary professional standards of care, skill and diligence consistent with good architectural practices for architectural firms in Texas that provide professional design services for projects that are similar in size, scope, and budget to the Project (the "Standard of Care"). Subject to this Standard of Care, Architect/Engineer shall interpret and apply applicable national, federal, state, municipal, and State of Texas building and accessibility laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction in effect at the time the services are provided. There are no obligations, commitments, or impediments of any kind known to the Architect/Engineer that will limit or prevent performance by Architect/Engineer of its services. Architect/Engineer 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.

1.1.24 Architect/Engineer shall take reasonable precautions to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Architect/Engineer (by Owner or any other party) that Architect/Engineer uses for the Project. Architect/Engineer shall identify to the Owner in writing any such documents or data which, in Architect/Engineer's professional opinion, are unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. Owner does not warrant the accuracy or suitability of such documents or data as are furnished unless Architect/Engineer advises Owner in writing that in Architect/Engineer's professional opinion such documents or data are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes Architect/Engineer to proceed in accordance with the documents or data as originally given.

1.1.25 Architect/Engineer's services shall be free from any material errors or omissions in accordance with the Standard of Care. Neither acceptance nor approval of Architect/Engineer's services by the Owner shall relieve Architect/Engineer of any of its professional duties or release it from any liability, it being understood that Owner is, at all times, relying upon Architect/Engineer for its skill and knowledge in performing Architect/Engineer's services. Owner shall have the right to reject any of Architect/Engineer's services because of any fault or defect in the Project due to any material errors or omissions in the Plans, Drawings, Specifications, and other materials prepared by Architect/Engineer or its consultants. Upon notice of any such errors or omissions, Architect/Engineer shall promptly provide any and all services necessary to correct or remedy them at no additional cost to the Owner. Architect/Engineer's obligation to correct its errors and omissions is in addition to, and not in substitution for, any other remedy for defective services which Owner may have at law or in equity, or both.

1.1.26 The Architect/Engineer shall not proceed to any phase of design not expressly authorized by the Owner, except at the Architect/Engineer's own financial risk.

1.1.27 Architect/Engineer agrees to furnish efficient business administration and superintendence and to use Architect/Engineer's professional skill to design the Project in an

expeditious and economical manner consistent with the interest of Owner and Architect/Engineer's professional skill and care.

1.1.28 Architect/Engineer shall allocate adequate time, personnel and resources as necessary to perform its services. Architect/Engineer's Senior Principal(s) responsible for managing the Project is identified in Exhibit "A" and while employed by Architect/Engineer shall not be changed without the prior written approval of the Owner. The day-to-day Project Team will be led by the Senior Principal(s) unless otherwise directed by Owner or prevented by factors beyond the control of Architect/Engineer. The Senior Principal(s) shall act on behalf of Architect/Engineer with respect to all phases of Architect/Engineer's Services and shall be available as reasonably required for the benefit of the Project and Owner.

1.1.29 Architect/Engineer shall review any applicable documents provided by the Owner and the visible existing conditions at the Project site to identify existing systems and construction which must be modified to accommodate the Architect/Engineer's design for the Project and the construction of the Project. The Architect/Engineer shall identify to Owner any observable discrepancies between the documents and visible conditions, and shall consult with the Owner on any special measures, services or further investigations required for Architect/Engineer to perform its services in accordance with the Standard of Care. This review shall be accomplished by registered, professional architects and engineers, as appropriate.

1.1.30 When the Project is subject to Texas Commission on Environmental Quality (TCEQ) regulations, Architect/Engineer shall coordinate all related design efforts, including the civil engineer and landscape architect, so that consideration of site design and Best Management Practices (BMP) are integrated.

1.1.31 Insurance Coverage. The Architect/Engineer shall obtain and maintain, for the duration of this Agreement or longer as stated in subparagraph D below, the minimum insurance coverages set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas and currently rated A- or better by A.M. Best Company or otherwise acceptable to Owner. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to the Architect/Engineer under this Agreement. The Architect/Engineer shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The Architect/Engineer is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. Required insurance shall not be cancelable without thirty (30) days' prior written notice to Owner.

Coverages	Limit
A. Worker's Compensation	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$500,000 Each Accident \$500,000 Disease/Employee \$500,000 Disease/Policy Limit
B. Automobile Liability	
Owned Vehicles	\$1,000,000
Non-owned Vehicles	\$1,000,000
Hired Vehicles	\$1,000,000
C. Commercial General Liability	
Aggregate Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000
Premises and Operations	\$1,000,000
Personal/Advertising Injury	\$1,000,000
Products/Completed	\$1,000,000

D. Professional Liability (E&O)

The Architect/Engineer shall maintain Professional Liability covering wrongful acts, errors and/or omissions, including design errors of the Architect/Engineer for damages sustained by reason of or in the course of performance of this Agreement for three (3) years after the Project is substantially complete. The Professional Liability insurance shall be in an amount based on the AACC and determined by the following chart:

AACC	Limit
\$0 - \$20,000,000	\$1,000,000 each claim/\$ 2,000,000 aggregate
\$20,000,001 - \$60,000,000	\$2,000,000 each claim/\$ 4,000,000 aggregate
\$60,000,001 - \$90,000,000	\$3,000,000 each claim/\$ 6,000,000 aggregate
\$90,000,001 - \$120,000,000	\$4,000,000 each claim/\$ 8,000,000 aggregate
\$120,000,001 – higher	\$5,000,000 each claim/\$10,000,000 aggregate

1.1.32 Architect/Engineer shall include The Texas A&M University System Board of Regents, The Texas A&M University System and Texas A&M University and **[Program Manager if applicable]** as additional insured on the Commercial General Liability and Automobile Liability policies, and the Workers' Compensation policy shall include a waiver of subrogation in favor of the Owner.

1.1.33 The Owner has or intends to select a Construction Manager for this Project (the "Construction Manager" or "Contractor"), and the Architect/Engineer shall coordinate its services and work collaboratively with the Construction Manager. The Owner may direct the Architect/Engineer to recognize the Construction Manager as its representative for the performance of various duties which are otherwise defined as the responsibility of the Owner. Architect/Engineer hereby acknowledges such appointment. Upon request, Architect/Engineer shall be entitled to review a redacted version of the agreement between the Owner and the

Construction Manager for this project (the “CMAR Agreement”). Nothing in the CMAR Agreement shall confer direct responsibility on the Construction Manager for the Architect/Engineer’s services, nor shall anything contained therein diminish Architect/Engineer’s responsibility for its services as set forth hereunder. Likewise, nothing in the CMAR Agreement shall confer direct responsibility on the Architect/Engineer for the Construction Manager’s services, nor shall anything contained therein affect the Architect/Engineer’s responsibility for and scope of its services as set forth hereunder.

1.1.34 The Owner may select a Program Manager for this Project, and the Architect/Engineer shall coordinate its services with the Program Manager. The Owner may direct the Architect/Engineer to recognize the Program Manager as its representative for the performance of various duties which are otherwise defined as the responsibility of the Owner. Architect/Engineer hereby acknowledges such appointment.

1.1.35 The Architect/Engineer shall participate in the development and review of the Construction Manager’s GMP Proposal. The GMP Proposal will include the qualifications, assumptions, exclusions, value engineering and all other requirements identified within the CMAR Agreement. Following Owner’s approval of the GMP Proposal, the Architect/Engineer shall be responsible for developing the Construction Documents, consisting of Plans and Specifications, setting forth in detail, and incorporating the aforementioned requirements identified in the CMAR Agreement and contained in the GMP Proposal. Furthermore, the Architect/Engineer shall be sufficiently knowledgeable of the Construction Manager’s GMP Proposal so as to reasonably understand the contents of the GMP Proposal and ultimately confirm to the best of the Architect/Engineer’s ability that the Construction Documents, when complete, reflect all qualifications, clarifications and assumptions contained within the GMP Proposal. The Architect/Engineer and the Construction Manager shall jointly provide a monthly status report stating the progress of the incorporation of the GMP qualifications, clarifications, assumptions, exclusions and value engineering and all other requirements into the Construction Documents.

1.1.36 The Architect/Engineer shall utilize Building Information Modeling (BIM) authoring software and BIM based design processes to produce a building information model(s) (model) for this project. The Architect/Engineer shall be knowledgeable of BIM use for all phases of the design and utilize data, graphics, and drawings derived from the model for decision making support and construction documentation as part of Basic Services. The Building Information Modeling (BIM) software shall be compliant with Industry Foundation Class (IFC2x3 or higher). Additional requirements are included in the BIM Execution Plan (Exhibit “D”).

1.1.37 BIM is defined in the National Building Information Modeling Standard as a digital representation of physical and functional characteristics of a facility. As such it serves as a shared knowledge resource for information about a facility forming a reliable basis for decisions during its life-cycle from inception onward. A basic premise of BIM is collaboration by different stakeholders at different phases of the life cycle of a facility to insert, extract, update or modify information in the BIM process to support and reflect the roles of that stakeholder. The BIM is a shared digital representation founded on open standards for interoperability.

1.1.38 The Architect/Engineer shall utilize Owner's web based project management software application, *IMPACTTeam*, for all project documentation through all phases of the Project. Architect/Engineer shall follow Owner's guidelines on the use of *IMPACTTeam*.

1.1.39 The Architect/Engineer, at the Architect/Engineer's expense, at each stage of review described in Article 15, shall furnish and deliver to the Owner the model in native file format and the number of complete printed copies of all Plans, Schedules, Drawings and Specifications derived from the model as enumerated in Article 15, which copies shall become the property of the Owner. The Architect/Engineer shall incorporate into the model and Specifications such changes as are necessary to satisfy the Owner's written review comments or published meeting minutes, any of which may be appealed in writing for good cause. The Architect/Engineer shall pay for the reproduction of all Plans, Specifications and other documents for use by the Architect/Engineer and its consultants.

1.2 Schematic Design Phase

1.2.1 Based on the mutually agreed upon Program of Requirements, Amount Available for the Construction Contract and the Project Schedule, the Architect/Engineer shall prepare sufficient alternative approaches utilizing BIM for design and construction of the Project to satisfy Owner's project requirements and shall, at completion of this phase, submit Schematic Design Documents derived from the model in accordance with the BIM Execution Plan, "Facility Design Guidelines" and any additional requirements set forth in Article 15. The Architect/Engineer shall review alternative approaches to design and construction for the Project as they are being modeled at intervals appropriate to the progress of the Project with the Owner and Construction Manager at the Project site or other location specified by the Owner within the State of Texas. The Architect/Engineer shall utilize the model(s) to support the review process during Schematic Design. The Architect/Engineer shall provide the Construction Manager with a compact disc containing documents and data files derived from the model to assist the Construction Manager in fulfilling its responsibilities to the Owner.

1.2.2 Architect/Engineer shall provide all services necessary to perform the services of this phase (preparation of model(s), relevant data, decision support model views and Schematic Design Documents) including, without limitation, unless otherwise approved by Owner, the preparation and prompt delivery of all items specified in the BIM Execution Plan and "Facility Design Guidelines".

1.2.3 Architect/Engineer shall work closely with Owner in preparation of schematic drawings and shall specifically conform to Owner's requirements regarding aesthetic design issues.

1.2.4 The Architect/Engineer shall furnish and deliver to the Owner the model in native file format and the number of complete printed sets of Schematic Design documents derived from the model as enumerated in Article 15. The Architect/Engineer shall direct the preparation of a detailed Estimated Construction Cost as described in Sub-paragraph 1.1.19 to confirm compliance with the Amount Available for the Construction Contract and include it with the completed Schematic Design Documents. The Architect/Engineer shall review its Estimated Construction Cost in comparison with the Estimated Construction Cost prepared by the

Construction Manager, and shall reconcile any differences between the two Estimated Construction Costs in coordination with the Construction Manager. If the Architect/Engineer is unable to reconcile all differences between the two Estimated Construction Costs with the Construction Manager, then the Architect/Engineer shall provide a detailed explanation of the differences to the Owner.

1.2.5 Before proceeding into the Design Development Phase, the Architect/Engineer shall obtain Owner's written acceptance of the Schematic Design documents and approval of the Architect/Engineer's preliminary Estimated Construction Cost and schedule.

1.2.6 The Architect/Engineer shall participate in a final review of the Schematic Design Documents and model(s) with the Owner and Construction Manager at the Project site or other location specified by Owner in the State of Texas. Prior to the Owner's approval of the Schematic Design Documents, the Architect/Engineer shall incorporate such changes as are necessary to satisfy the Owner's review comments, any of which may be appealed for good cause.

1.3 Design Development Phase

1.3.1 Based on the approved Schematic Design Documents, model(s) and any adjustments to the Program of Requirements, BIM Execution Plan or Amount Available for the Construction Contract authorized by the Owner, the Architect/Engineer shall prepare, for approval by the Owner and review by the Construction Manager, Design Development Documents derived from the model(s) in accordance with Owner's written requirements to further define and finalize the size and character of the Project in accordance with the BIM Execution Plan, "Facility Design Guidelines" and any additional requirements set forth in Article 15. The Architect/Engineer shall review the Design Development documents as they are being modeled at intervals appropriate to the progress of the Project with the Owner and Construction Manager at the Project site or other location specified by Owner in the State of Texas. The Architect/Engineer shall utilize the model(s) to support the review process during Design Development. The Architect/Engineer shall provide the Construction Manager with a compact disc containing documents and data files derived from the model to assist the Construction Manager in fulfilling its responsibilities to the Owner.

1.3.2 As a part of Design Development Phase Architect/Engineer shall accomplish model coordination, aggregation and "clash detection" to remove conflicts in design between systems, structures and components. Architect/Engineer shall demonstrate and provide written assurance to Owner that all conflicts/collisions between models have been resolved

1.3.3 The Architect/Engineer shall furnish and deliver to the Owner the model in native file format and the number of complete printed sets of Design Development documents derived from the model as enumerated in Article 15.

1.3.4 The Architect/Engineer shall direct the preparation of a detailed Estimated Construction Cost as described in Sub-paragraph 1.1.19 to confirm compliance with the Amount Available for the Construction Contract and include it with the completed Design Development Documents. The Architect/Engineer shall review its Estimated Construction Cost in comparison with the Estimated Construction Cost prepared by the Construction Manager, and shall reconcile

any differences between the two Estimated Construction Costs in coordination with the Construction Manager. If the Architect/Engineer is unable to reconcile all differences between the two Estimated Construction Costs with the Construction Manager, then the Architect/Engineer shall provide a detailed explanation of the differences to the Owner. The Architect/Engineer will not be required to make revisions to the documents at its own expense under the provisions of Paragraph 1.3.8 if the Architect/Engineer is directed to proceed into the Design Development Phase on the basis of the Estimated Construction Cost prepared by the Construction Manager with which the Architect/Engineer has documented its disagreement and has provided a detailed explanation to the Owner.

1.3.5 Before proceeding into the Construction Document Phase, the Architect/Engineer shall obtain Owner's written acceptance of the Design Development documents and approval of the mutually established Amount Available for the Construction Contract and schedule.

1.3.6 The Architect/Engineer shall prepare presentation materials including an animation derived from the model(s) as defined in "Facility Design Guidelines" at completion of Design Development and if so requested shall present same to the Board of Regents at a regular meeting where scheduled within the state.

1.3.7 The Architect/Engineer shall prepare preliminary recommended furniture layouts for all spaces where it is deemed important to substantiate the fulfillment of program space requirements, or to coordinate with specific architectural, mechanical and electrical elements.

1.3.8 Architect/Engineer shall assist the Owner, if requested, with seeking approval of the Project by the Texas Higher Education Coordinating Board (THECB). Such assistance shall include (i) the preparation of a listing of the rooms and square footages in the Project, and (ii) the preparation of project cost information, in accordance with THECB Guidelines. This information shall be provided at the completion of the Design Development Phase when requested by the Owner. The listing of rooms and square footages shall then be updated to reflect any changes occurring during construction and provided to the Owner at Substantial Completion.

1.3.9 At the completion of the Design Development Phase, or such other time as Owner may specify to Architect/Engineer, at Owner's sole option and discretion, Owner will furnish Architect/Engineer with a Guaranteed Maximum Price proposal prepared by Construction Manager based upon the Design Development documents prepared by the Architect/Engineer and approved by the Owner. The Architect/Engineer shall assist the Owner and endeavor to further and advocate the Owner's interests in Owner's communications with the Construction Manager in an effort to develop a Guaranteed Maximum Price proposal acceptable to Owner, in Owner's sole option and discretion. If the Owner does not accept the Construction Manager's Guaranteed Maximum Price proposal, the Architect/Engineer shall participate with the Owner and Construction Manager in constructability reviews and shall revise the documents as necessary in order to reach an agreement. If the Construction Manager's Guaranteed Maximum Price proposal exceeds the Schematic Design Phase Estimated Construction Cost prepared by, or otherwise accepted by the Construction Manager due to an increase in the scope of the Project caused by further development of the design documents by the Architect/Engineer to the extent that such could not be reasonably inferred by the Construction Manager from the Schematic Design

documents, and Owner directs Architect/Engineer to revise the documents, the Architect/Engineer shall revise the documents at its own expense so that the Guaranteed Maximum Price proposal for constructing the Project shall not exceed the Owner's Amount Available for the Construction Contract and any previously approved Estimated Construction Costs. If it is determined to be in the Owner's best interest, instead of requiring the Architect/Engineer to revise the Drawings and Specifications, the Owner reserves the right to accept a Guaranteed Maximum Price proposal that exceeds the stipulated Amount Available for the Construction Contract. The Architect/Engineer shall analyze the final Guaranteed Maximum Price proposal document, together with its supporting assumptions, clarifications, and contingencies, and shall submit a detailed written analysis of the document to the Owner. Such analysis shall include, without limitation, reference to and explanation of any inaccurate or improper assumptions and clarifications. The A/E will not be required to make revisions to the documents at its own expense under the provisions of this paragraph if the Owner's rejection of the Guaranteed Maximum Price proposal is not due to a failure of the A/E to provide the services otherwise required herein.

1.3.10 After the Guaranteed Maximum Price has been accepted, the Architect/Engineer shall incorporate necessary revisions into the Design Development documents. The A/E will not be required to make revisions to the documents at its own expense under the provisions of this paragraph if the revisions are required as the result of inaccurate assumptions and clarifications made in the development of the Guaranteed Maximum Price proposal that are not due to a failure of the A/E to provide the services otherwise required herein.

1.4 Construction Document Phase

1.4.1 Based on the approved Design Development Documents, Guaranteed Maximum Price, coordinated models and any further adjustments in the scope or quality of the Project or in the Amount Available for the Construction Contract authorized by the Owner, the Architect/Engineer shall prepare, for approval by the Owner and review by the Construction Manager, Construction Documents consisting of Drawings, Schedules and Specifications derived from the model(s) in accordance with Owner's written requirements setting forth in detail the requirements for construction of the Project, including, without limitation, the BIM Execution Plan and "Facility Design Guidelines". The Plans, Drawings and Specifications for the entire Project shall be so prepared that same will call for the construction of the building and related facilities, together with its built-in permanent fixtures and equipment which will cost no more than the Guaranteed Maximum Price accepted by Owner, or the Amount Available for the Construction Contract established by Owner if no Guaranteed Maximum Price proposal has been accepted by Owner. The Architect/Engineer will be responsible for managing the design to stay within such Guaranteed Maximum Price proposal or Amount Available for the Construction Contract. The Architect/Engineer shall review the Construction Documents as they are being prepared at intervals appropriate to the progress of the Project with the Owner and Construction Manager at the Project site or other location specified by Owner in the State of Texas. The Architect/Engineer shall utilize the model(s) to support the review process during Construction Documents. The Architect/Engineer shall provide the Construction Manager with a compact disc containing documents and data files derived from the model to assist the Construction Manager in fulfilling its responsibilities to the Owner.

1.4.2 As a part of Construction Documents Phase Architect/Engineer shall accomplish model coordination, aggregation and “clash detection” to remove conflicts in design between systems, structures and components. Architect/Engineer shall demonstrate and provide written assurance to Owner that all conflicts/collisions between models have been resolved

1.4.3 The Architect/Engineer shall consult with the Owner and Construction Manager on matters such as construction phasing and scheduling, bid or proposal alternates, liquidated damages, the construction contract time period, and other construction issues appropriate for the Project. The Architect/Engineer shall assist the Owner and Construction Manager in the preparation of the necessary bidding information, bidding forms, RFP information, and RFP forms, and the Conditions of the Contract.

1.4.4 The Architect/Engineer shall assist the Owner in connection with the Owner’s responsibility and procedures for obtaining approval of all building and accessibility authorities having jurisdiction over the Project.

1.4.5 The Architect/Engineer shall provide coordination and inclusion of sequence of operations for all operable systems in the facility as defined by Owner during Design Development.

1.4.6 The Architect/Engineer shall direct the preparation of a detailed Estimated Construction Cost as described in Sub-paragraph 1.1.19 to confirm compliance with the Amount Available for the Construction Contract and include it with the completed Construction Documents. The Architect/Engineer shall review its Estimated Construction Cost in comparison with the Estimated Construction Cost prepared by the Construction Manager, and shall reconcile any differences between the two Estimated Construction Costs in coordination with the Construction Manager. If the Architect/Engineer is unable to reconcile all differences between the two Estimated Construction Costs with the Construction Manager, then the Architect/Engineer shall provide a detailed explanation of the differences to the Owner.

1.4.7 The Architect/Engineer shall participate in a final review of the Construction Documents and model(s) with the Owner and Construction Manager at the Project location or other location specified by Owner in the State of Texas. Prior to the Owner’s approval of the Construction Documents, the Architect/Engineer shall incorporate such changes as are necessary to satisfy the Owner’s review comments.

1.4.8 Before proceeding into the Bidding and Proposal Phase, the Architect/Engineer shall obtain Owner’s written acceptance of the Construction Documents and approval of the Final Amount Available for the Construction Contract as approved by the Board of Regents.

1.5 **Bidding and Proposal Phase**

1.5.1 In conjunction with the development of the Guaranteed Maximum Price and at other times as appropriate to the Project, the Architect/Engineer shall assist the Owner and Construction Manager by receiving and recording requests for Bid and Request for Proposal (“RFP”) Documents, receiving and resolving questions about Bid and RFP Documents; preparing addenda, issuing addenda, and accounting for addenda issued; attending pre-bid and pre-proposal conferences and HUB meetings; evaluating bids and proposals; and assisting in preparing and

awarding multiple contracts for construction. Architect/Engineer shall answer inquiries from bidders and proposers at Owner's request, and shall prepare and issue any necessary addenda to the bidding or proposal documents.

1.5.2 The Architect/Engineer shall assist the Construction Manager and Owner in investigating the responsibility of apparent low bidders or proposers and inform Owner in writing of its findings and recommendations. For proposers selected by qualifications and by competitive sealed proposals, the Architect/Engineer shall assist the Construction Manager and Owner in investigating qualifications and other pertinent proposal information and inform the Owner in writing of its findings and recommendations.

1.5.3 In the event the Guaranteed Maximum Price proposal received for the Project exceeds the Final Amount Available for the Construction Contract as approved by the Board of Regents,, if the Architect/Engineer is required to make revisions to the Contract Documents, the Architect/Engineer shall be entitled to compensation, as an Additional Service for changes to the Contract Documents that result from scope changes directed by the Owner that materially impact costs or revisions to the Contract Documents directed by the Owner that resulted in an increase in the AACC. The Owner reserves the right to accept a proposal and award a construction contract that exceeds the Final Amount Available for the Construction Contract, if such award is determined by Owner to be in the Owner's best interest.

1.6 Construction Phase - Administration of the Construction Contract

1.6.1 The Construction Phase shall commence with the acceptance of the Construction Manager's Guaranteed Maximum Price (or acceptance of a partial Guaranteed Maximum Price for a stage or phase) and issuance of a Notice to Proceed with Construction Services and terminate sixty (60) days after Final Payment to the Contractor is made, or when all of Architect/Engineer's services have been satisfactorily performed, whichever occurs later.

1.6.2 Architect/Engineer shall provide administration of the Contract for Construction as set forth below and in the edition of the BIM Execution Plan and "Facility Design Guidelines" current as of the date of this Agreement.

1.6.3 The Architect/Engineer shall provide updated documents derived from the model(s) at each Contractor's monthly meeting and when requested and as indicated in the BIM Execution Plan.

1.6.4 The Architect/Engineer shall review the Contractor's list of proposed subcontractors for the Work, initial administrative submittals for Project Schedule, Schedule of Values and Submittal Schedule to establish appropriate bases for construction monitoring, payment processing, and system commissioning. The Architect/Engineer shall identify necessary revisions to the documents in writing to the Contractor and recommend acceptance of the documents by the Owner when appropriate. The Architect/Engineer shall review periodic updates of all schedules with Owner and Contractor to evaluate appropriateness.

1.6.5 The Architect/Engineer shall have authority to act on behalf of the Owner to the extent provided in the Contract Documents. Duties, responsibilities and limitations of authority of

the Architect/Engineer shall not be restricted, modified or extended without written acceptance of the Owner.

1.6.6 Site Visits. The Architect/Engineer shall visit the site at least once each month during the entire construction period to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. Each of Architect/Engineer's consultant shall visit the site at least once each month during construction activities related to the consultant's discipline to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. Architect/Engineer and its consultants shall submit written reports of their site visits and meetings. The Architect/Engineer shall not be required to make exhaustive or continuous onsite visits to inspect the quality or quantity of the Work.

- a) On the basis of the onsite observations, the Architect/Engineer shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. Architect/Engineer shall notify Owner and the Contractor in writing of any portions of the work which Architect/Engineer has observed as not being in conformity with the Construction Documents and make recommendations as to correction of the deficiencies or defects. Architect/Engineer shall make its site representative available and shall consult with Owner and the Contractor on the occasion of all circumstances arising during the course of construction which would make such consultation in Owner's interests.
- b) In addition to site visits for general observation, the Architect/Engineer and its consultants shall visit the site for specific purposes related to certification of progress payments, pre-installation meetings, start-up or mock-up reviews for significant work activities and for formal inspections of the Work. The Architect/Engineer and its consultants shall provide written reports of all site visits to the Owner and Contractor.

1.6.7 The Architect/Engineer shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

1.6.8 The Architect/Engineer shall at all times have access to the Work wherever it is in preparation or progress.

1.6.9 The Architect/Engineer shall determine the amounts owing to the Contractor based on its periodic observations of Work placed at the site and on evaluations of the Contractor's Application for Payment, and shall coordinate its review and evaluation with the Owner's representatives, and shall certify Contractor's Application for Payment in an appropriate amount.

1.6.10 The certification of a Contractor's Application for Payment shall constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's observations at the site and on the data comprising the Contractor's Application for Payment, that

the Work has progressed to the point indicated; that, to the best of the Architect/Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Contractor's Application for Payment); and that the Contractor is entitled to payment in the amount certified. However, the approval of a Contractor's Application for Payment shall not be a representation that the Architect/Engineer has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Sum.

1.6.11 The Architect/Engineer shall be the interpreter of the technical requirements of the Contract Documents and the judge of the performance of the work of the Contractor. The Architect/Engineer shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written recommendations within a reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

1.6.12 Interpretations and recommendations of the Architect/Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form.

1.6.13 Subject to approval of the Owner, the Architect/Engineer's decisions in matters relating to artistic effect shall be final if consistent with and reasonably inferable from the intent of the Contract Documents

1.6.14 The Architect/Engineer and its consultants shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, fabrication model(s), Product Data and Samples, but only for conformance with the design concept of the Work set forth in the Contract Documents, and shall respond to Contractor's inquiries and questions and provide supplemental information as appropriate. Action on submittals shall be taken with reasonable promptness to cause no delay to the Contractor's scheduled progress, but in any event no more than fourteen (14) days after receipt. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Architect/Engineer's review shall not constitute approval of any construction means or methods.

1.6.15 Architect/Engineer shall clarify and interpret the intent and scope of the Construction Documents and, if necessary or appropriate, issue supplemental documents and model views to amplify or explain portions of the Construction Documents.

1.6.16 Architect/Engineer shall provide assistance in the review of the Contractor's requests for change orders or claims for additional time or costs, and make recommendations to Owner as to such requests or claims. The Architect/Engineer shall inform Owner if a request for change order involves a change in scope.

1.6.17 Architect/Engineer shall prepare revised Contract Drawings, where appropriate, to illustrate and document the work required by approved Change Orders. All proposed changes to Drawings and Specifications, regardless of how initiated, shall be totally defined in the documents depicting them as to scope of work added, removed, or changed. The original copies of the Construction Documents maybe revised to show such changes, provided that all such revisions shall be recorded on the model(s). Such revisions shall be clearly indicated and a current revision date shall be included. Changes to the Specifications shall be made by consecutively numbered and dated addenda. All changes to design documents or Specifications will be identified with date of change, revision number and other customary identification references. Areas changed on Drawings will be “clouded” to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.

1.6.18 Architect/Engineer and its consultants shall conduct and participate in concealed space observations, systems start-up observations, systems integration/operational demonstrations, Substantial Completion and pre-Final work observations to determine the dates of Substantial Completion, and Final Completion. In association with each observation, Architect/Engineer and its consultants shall prepare a list of items that Architect/Engineer, its consultants and Owner have observed as deficiencies in the Work, requiring remedial work or replacement, assemble and distribute the official punchlist(s) to all affected parties, and thereafter review the corrected and/or replaced work and assist in verification of correction of all items.

1.6.19 Architect/Engineer shall review, for conformance with the Contract Documents, Contractor’s submission of guarantees and warranties.

1.6.20 The Architect/Engineer and its consultants shall assist the Owner in checking Record Drawings derived from model(s) maintained by the Construction Manager during the course of the Work in association with certifying progress payments and shall review record documents for completeness and compliance with Contract requirements and the BIM Execution Plan at Substantial Completion and at Final Completion of the Project. The Architect/Engineer is not responsible for any errors and omissions in the information provided by others that are included in the Record Drawings.

1.6.21 Architect/Engineer shall receive and review Contractor’s submission of operating and maintenance instructions, and all manuals, brochures, drawings, and other close-out documentation furnished by the Contractor, shall require necessary revisions to same, and when acceptable under the terms of the CMAR Agreement, shall forward to Owner. The Architect/Engineer shall certify final payment to the Contractor when the requirements of the CMAR Agreement have been met.

1.6.22 Architect/Engineer shall revise the model(s) and Drawings and Specifications derived from the model(s) upon Final Completion of the construction, to incorporate all Addenda, all Change Orders for the Work and any modifications recorded by the Contractor on the Record Drawings and Specifications maintained at the job site. The Architect/Engineer shall label the revised Drawings and Specifications as “Record Drawings” and “Record Specifications” and shall deliver copies to the Owner for record purposes, as follows:

- All project Drawings: provide 2 copies of electronic media on CD-ROM/DVD in Microstation “DGN” or AutoCAD “DWG” or Revit “RVT” or ArchiCAD “PLN” and “IFC” digital format and “PDF” format. Project Spaces, Schedules, equipment and product data shall be in excel format derived from model(s).
- All project Specifications in electronic format on CD-ROM/DVD in MSWord format.
- CD-ROM/DVDs shall have labels indicating the project name and project number.
- CD-ROM/DVDs shall contain an index or contents file.
- One (1) reproducible mylar film and one (1) bond paper copy of Drawings. Paper sepias are not acceptable.

1.6.23 Architect/Engineer shall provide assistance to Owner through the commissioning consultant/agent for the purpose of advising and counseling Owner’s personnel in the usage, operation and maintenance of the building mechanical, electrical, and plumbing systems.

1.6.24 Architect/Engineer shall provide a milestone schedule that is acceptable to the Owner and shall be submitted on a monthly basis prior to submission of payment application, in conformance with the project milestone schedule, so that the desired design development schedule for the Project shall be maintained.

1.6.25 The Architect/Engineer shall be available after final payment to advise the Owner regarding Warranty items and to review Warranty work during the Warranty period. Architect/Engineer shall participate in the Project’s one-year warranty inspection, including preparation of punchlists and inspection of corrected punchlist items..

1.7 Additional Services

1.7.1 Additional Services are those services which shall be provided if authorized or confirmed in writing by the Owner and for which compensation will be provided as described in this Agreement in addition to the Basic Services Fee. Prior to commencing any Additional Service, Architect/Engineer shall prepare for acceptance by the Owner an Additional Services Proposal, in a format as directed by Owner, which shall describe in detail the nature or scope of the Additional Services, the basis upon which Architect/Engineer has determined that such services are Additional Services, and which shall set forth the maximum amount of fees for which Architect/Engineer is prepared to perform the Additional Services, together with a proposed schedule for the performances of the Additional Service. Architect/Engineer shall proceed only after written acceptance by Owner of the Additional Services Proposal.

1.7.2 Upon acceptance by Owner, each Additional Services Proposal and the services performed by Architect/Engineer pursuant to the Additional Services Proposal shall become part of this Agreement and shall be subject to all terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a Basic Service at the original execution of this Agreement.

1.7.3 Providing services to make detailed investigations of existing conditions or facilities or to make measured drawings of them is an Additional Service except as reasonably necessary to verify the accuracy and completeness of drawings or other information furnished by the Owner and to the extent necessary for the Architect/Engineer to complete its responsibilities hereunder free from any material errors and omissions in accordance with Standard of Care. Architect/Engineer shall not be required to perform any destructive testing unless agreed to as an Additional Service.

1.8 Time

1.8.1 Architect/Engineer shall perform all of Architect/Engineer's services described herein as expeditiously as is consistent with (1) Architect/Engineer's professional efforts, skill and care, (2) the orderly progress of such services, and (3) in conformance with the project milestone schedule so that the desired development and construction schedule for the Project shall be maintained. Architect/Engineer shall at all times provide sufficient personnel to accomplish Architect/Engineer's services within the time limits set forth in the schedule described in 1.8.2.

1.8.2 Included in the Program of Requirements is a schedule for completion of each of the phases of services to be performed by Architect/Engineer pursuant to this Agreement. The project schedule contains milestone dates which have been established in the Request for Qualifications previously issued or may be modified by the Owner to reflect current conditions. The Architect/Engineer shall coordinate with the Construction Manager in the preparation and maintenance of the schedule for performance of the professional services for the Project, including the Architect/Engineer's services. Changes in this schedule may be made only with the written approval of Owner. Architect/Engineer shall perform all of its services in accordance with the then-current schedule approved by Owner.

Article 2 Owner's Responsibilities

2.1 The Owner has provided or will provide a Program of Requirements to the Architect/Engineer, or the Owner and Architect/Engineer may agree that Architect/Engineer shall prepare a Program of Requirements as an Additional Service as set forth in Article 14 of this Agreement. The Program of Requirements will set forth the Owner's description of the project scope, preliminary project cost, schedule, criteria for design objectives, characteristics and constraints, space requirements and relationships, site requirements, existing facilities, and desired special components, systems and equipment. If Architect/Engineer prepares the Program of Requirements, then Owner will review the Program of Requirements when completed and then determine whether to proceed with the Project and authorize commencement of Basic Services. The Owner reserves the right to terminate this Agreement following completion of the Program of Requirements, and shall have no further obligation to Architect/Engineer other than payment for services authorized by Owner and provided by Architect/Engineer prior to such termination in accordance with the terms and conditions of this Agreement.

2.2 The Owner will provide a preliminary project budget and schedule for the Project. The budget will include the Amount Available for the Construction Contract, contingencies for

changes in the Work during construction, and other costs which are the responsibility of the Owner.

2.3 The Owner designates the Chief Facilities Planning and Construction Officer for Facilities Planning and Construction as its representative authorized to act in the Owner's behalf with respect to the Project. The Owner's authorized representative shall examine the documents submitted by the Architect/Engineer and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect/Engineer's services. The Director of Project Delivery for Facilities Planning and Construction is also designated as the Owner's representative for the purpose of administering this Agreement, including determination of fees earned by the Architect/Engineer. The Owner shall have the right to withhold from payments due Architect/Engineer such sums as the Owner deems reasonably necessary to protect Owner against any loss or damage which may result from negligence by Architect/Engineer or failure of Architect/Engineer to perform Architect/Engineer's obligations under this Agreement pending final resolution of such claims.

2.4 The Owner, at Owner's cost, will secure the services of laboratory testing engineers, or other special consultants to develop additional information to the extent necessary for the design of the Project. The Architect/Engineer shall provide the Owner with parameters for inclusion in the Owner's instructions to such providers.

2.5 The Owner shall arrange and pay for structural, mechanical, chemical and other laboratory tests as necessary during construction except as required of the Contractor in the Contract Documents.

2.6 The Owner shall furnish all legal, accounting, auditing and insurance counseling services deemed necessary by the Owner for the Project.

2.7 The services, information and reports required by the preceding paragraphs shall be furnished at the Owner's expense.

2.8 If the Owner observes or otherwise acquires actual knowledge of any design fault or defect in the Project or conflict in the Contract Documents, written notice thereof will be given by the Owner to the Architect/Engineer; however, Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

2.9 The Owner will review the Architect/Engineer's design at the completion of the Schematic Design and Design Development phases and at completion of the stages of Construction Documents as described in Article 14. Comments concerning corrections or amendments to the model(s), Plans and Specifications will be furnished in writing to the Architect/Engineer as promptly as possible after receipt of the documents for review. Owner's approval of the documents must be in writing and no approval may be deemed given in the absence of written approval. The Owner may require the Architect/Engineer to halt production during design review.

2.10 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architect/Engineer's services and of the Work.

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

Article 3

Construction Cost—Definition

3.1 The Estimated Construction Cost shall be the total cost of all elements of the Project, including all alternate bids or proposals, designed and specified by the Architect/Engineer.

3.2 The Estimated Construction Cost shall include at current market rates a reasonable allowance for overhead, profit and general conditions, the cost of labor and materials furnished by the Owner and any equipment which has been shown in the Plans, specified, and specially provided for by the Architect/Engineer.

3.3 The Estimated Construction Cost does not include compensation to the Architect/Engineer and the Architect/Engineer's consultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the Owner as provided in Article 2.

Article 4

Personnel Titles and Hourly Rates

4.1 Prior to entering into any agreement between the Architect/Engineer and the Owner, and the Architect/Engineer and its consultants, the Architect/Engineer shall submit a full list of all personnel titles and the hourly wage for each. The initial list is attached hereto as Exhibit "A". The hourly rates contained therein may be adjusted annually in accordance with the usual and customary salaries of the architectural profession in the area of Architect/Engineer's office, to rates mutually approved by the Owner and the Architect/Engineer.

Article 5

Reimbursable Services

5.1 Reimbursable Services are in addition to the Compensation for Basic Services and Additional Services. These include actual not-to-exceed expenditures made by the Architect/Engineer and the Architect/Engineer's consultants incurred solely and directly in connection with Architect/Engineer's performance of its services hereunder for the following expenses:

5.1.1 Fees paid for securing approval of authorities having jurisdiction over the Project.

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

5.1.3 Cost of site survey and geotechnical investigations.

5.1.4 Cost of preparation of a Program of Requirements.

5.1.5 Other items agreed to by the Owner in writing.

[Project Manager should contact Director of Project Controls if travel needs to be included as a reimbursable expense.]

5.2 Expenses not allowed for reimbursement include the cost of review documents required to be provided to the Owner under Article 14, telephone charges, cell phone and PDA charges, FAX service, alcoholic beverages, laundry, car washes, valet service, entertainment and any non-project related items.

5.3 Owner shall pay a mark-up not to exceed ten percent (10%) on those reimbursable identified in 5.1.1 through 5.1.4 above. A mark-up shall not be paid on lodging, meals or travel expenses. Architect/Engineer shall submit receipts for all reimbursable services along with any reimbursement request.

5.4 Owner must authorize all Reimbursable Services prior to the performance of the reimbursable item. Charges for Reimbursable Services must not exceed the established category amounts unless authorization, in writing, is obtained from the Owner.

Article 6

Basis of Compensation

The Owner shall compensate the Architect/Engineer for the services provided in accordance with Article 7. Payments to the Architect/Engineer shall be as follows:

6.1 Basic Services Fee

6.1.1 For Basic Services, as described in Article 1, and including all disciplines identified in Paragraph 14.1 as part of Basic Services, Architect/Engineer's fee shall be a negotiated Basic Services Fee to cover all costs and profit.

6.1.2 The Architect/Engineer's Basic Services Fee will be based on the Amount Available for the Construction Contract identified in the Request for Qualifications.

6.1.3 In multiple package projects, the basic services fee for each package shall be determined in a manner agreed to by A/E and Owner. The Architect/Engineer's total Basic Services Fee will be the sum of the basic services fees for all packages.

6.1.4 If the description of the Architect/Engineer's Basic Services is changed materially, the applicable fee shall be adjusted equitably.

6.2 Fees for Changes in Project Scope

6.2.1 For reductions in the scope of the Work of the Project that occur after commencement of the Construction Documents Phase the Architect/Engineer's fee for basic services related to the eliminated portion of the work, to the extent such services are provided, shall be negotiated with the Owner.

6.2.2 For increases in the scope of Work of the Project that occur after commencement of the Construction Documents Phase , the fee for the additional Basic Services required will be negotiated with the Owner.

6.3 Fees for Change Order Services

If revised construction documents are required due to material changes ordered by the Owner and not due to errors and omissions on the part of the Architect/Engineer, or its consultants, the fee for the additional Basic Services required will be negotiated with the Owner.

6.4 Additional Services

6.4.1 For additional services of the Architect/Engineer, that are not Basic Services, due to changes in Project scope, the Architect/Engineer's fee shall be a negotiated amount agreeable to Architect/Engineer and Owner.

6.4.2 For additional services of the Architect/Engineer's consultants, that are not Basic Services, due to changes in Project scope, the Architect/Engineer's fee shall be calculated as an amount negotiated by the Owner and the Architect/Engineer not to exceed 1.10 times the amount that the consultant bills the Architect/Engineer for the additional services.

6.5 Reimbursable Services

For reimbursable services, as described in Article 5, and any other items included in Article 14 as Reimbursable Services, the Architect/Engineer's reimbursement shall be calculated as an amount not to exceed 1.10 times the amounts actually expended by the Architect/Engineer and the Architect/Engineer's consultants in the interest of the Project.

6.6 If the Owner and the A/E are unable to agree on the fee changes in scope or change order services under paragraph 6.2 and 6.3, respectively, the A/E shall not suspend performance and the amount that is acceptable to both parties shall be paid. Any additional amount claimed by the A/E shall be submitted to Owner as a claim under Article 13.13 (Dispute Resolution)

Article 7 Payments to the Architect/Engineer

7.1 Payments for Basic Services

7.1.1 Payments for Basic Services shall be made [Select one of the following frequencies of payment] [at the end of each Phase of Services or monthly] and shall be in proportion to services performed within each Phase of services, as demonstrated by work product, on the basis set forth in Article 6. The form of Statement for Architectural/Engineering Services to be utilized is attached hereto as Exhibit "B". Each Statement for Architectural/Engineering Services must be accompanied by an HSP-Prime Contractor Progress Assessment Report in the form of Exhibit "C."

7.1.2 No partial payment made shall be, or construed to be, final acceptance or approval of the services to which the partial payment relates, or a release of Architect/Engineer of any of Architect/Engineer's obligations or liabilities with respect to such services.

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

7.1.4 Architect/Engineer shall submit a request for final payment to the Owner within thirty days after approval of the final payment to the Contractor.

7.1.5 The acceptance by Architect/Engineer, or Architect/Engineer's successors, of final payment under this Agreement shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which Architect/Engineer, or Architect/Engineer's successors, have or may have against Owner under the provisions of this Agreement except those claims previously made in writing and identified by Architect/Engineer as unsettled at the time of the final request for payment.

7.1.6 Payment of A/E's invoice is subject to the Texas Prompt Payment Act, Chapter 2251, *Texas Government Code*.

7.1.7 All payments to A/E shall be by electronic direct deposit. A/E is required to complete and submit to Owner a Vendor Direct Deposit Authorization prior to the first payment request. Form can be accessed at www.window.state.tx.us/taxinfo/taxforms/74-176.pdf.

7.2 Payments for Additional Services and Reimbursable Services

Payments for the Architect/Engineer's Additional Services and for Reimbursable Services shall be made monthly upon presentation of the Architect/Engineer's valid statement of services rendered or expenses incurred as approved by Owner. Invoices shall include complete documentation of all expenses.

7.3 Payments Withheld

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

- a) Architect/Engineer is in breach or default under this Agreement;
- b) Any portion of a payment is for services that were not performed in accordance with this Agreement; provided, however, payment shall be made for those services which were performed in accordance with this Agreement;
- c) Architect/Engineer has failed to make payments promptly to consultants or other third parties used in connection with services for which Owner has made payment to Architect/Engineer;

- d) If Owner, in its good faith judgment, determines that the balance of the unpaid fees are not sufficient to complete the services in accordance with this Agreement; or
- e) Architect/Engineer has failed to achieve a level of performance necessary to maintain the project schedule.
- f) Architect/Engineer fails to comply with conditions set forth in the HUB Subcontracting Plan, including but not limited to the submission of the HSP - Prime Contractor Progress Assessment Report with each monthly invoice.

7.3.2 No deductions shall be made from the Architect/Engineer's compensation on account of liquidated damages or other sums withheld from payments to Contractor or on account of the cost of changes in the Work other than those for which the Architect/Engineer is liable.

Article 8

Architect/Engineer Accounting Records

8.1 Records of Reimbursable Services and expenses pertaining to Additional Services and services performed on the basis of hourly rates shall be kept on the basis of Generally Accepted Accounting Principles and shall be available to the Owner or the Owner's authorized representative at mutually convenient times for a period of at least three (3) years after final completion of the Project. Owner shall have the right to verify the details set forth in Architect/Engineer's billings, certificates, and statements, either before or after payment by (1) inspecting the books and records of Architect/Engineer during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Architect/Engineer's business employees; (4) visiting the Project site; and (5) other reasonable action.

8.2 Records of Architect/Engineer costs, reimbursable services pertaining to the Project, and payments shall be available to Owner or its authorized representative during business hours and shall be retained for three years after final payment or abandonment of the Project, unless Owner otherwise instructs Architect/Engineer in writing.

Article 9

Ownership and Use of Documents

9.1 Drawings and Specifications as instruments of service are and shall remain property of the Architect/Engineer whether the Project for which they are made is executed or not. The Owner shall be permitted to retain copies, including electronic and reproducible copies, of all model(s), model data, schedules and Drawings and Specifications for information and reference in connection with the Owner's use and occupancy of the Project upon payment of the amounts due under this Agreement. Owner shall have an irrevocable, paid-up, and perpetual non-exclusive license and right, which shall survive the termination of this Agreement, to use the all model(s), model data, schedules and Drawings and Specifications, including the originals thereof, and the ideas and designs contained therein, for any purpose related to the construction, maintenance or use of the Project and for informational purposes for any future project by the Owner, regardless of whether Architect/Engineer remains as the Architect/Engineer, has resigned, this Agreement has been terminated, Architect/Engineer's scope of services has been modified, or the services herein

have been completed. If this Agreement is terminated, Architect/Engineer hereby consents to the employment by Owner of a substitute architect/engineer to complete the services under this Agreement. The Architect/Engineer and its consultants shall not be liable for any use of such information that are inconsistent with the purposes for which the Architect/Engineer provided such information or changes made by the Owner to the all model(s), model data, schedules and Drawings or Specifications or for claims or actions arising from the Architect/Engineer's incomplete services or from any such alternative use or changes on projects in which the Architect/Engineer is not involved.

9.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not be construed as publication in derogation of the Architect/Engineer's rights.

Article 10

Termination of Agreement

10.1 This Agreement may be terminated by either party upon seven days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination and such failure is not fully cured prior to the expiration of such seven day period.

10.2 This Agreement may be terminated at any time by the Owner for its convenience upon at least seven days' written notice to the Architect/Engineer.

10.3 In the event of termination not the fault of the Architect/Engineer, the Architect/Engineer shall be compensated for all services satisfactorily performed to the termination date, together with approved Reimbursable Services then due, provided Architect/Engineer shall have delivered to Owner such statements, accounts, reports and other materials as required by Paragraph 10.5 below together with all reports, documents and other materials prepared by Architect/Engineer prior to termination.

10.4 A termination under this Article shall not relieve Architect/Engineer or any of its employees of liability for violations of this Agreement, or any willful, negligent or accidental act or omission of Architect/Engineer. The provisions of Article 9 hereof shall survive the termination of this Agreement. In the event of a termination under this Article, Architect/Engineer hereby consents to employment by Owner of a substitute architect/engineer to complete the services under this Agreement.

10.5 As of the date of termination of this Agreement, Architect/Engineer shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by Architect/Engineer in connection with Architect/Engineer's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise.

Article 11 Successors and Assigns

The Owner and the Architect/Engineer, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, permitted successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. This Agreement is a personal service contract for the services of Architect/Engineer, and Architect/Engineer's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. The benefits and burdens of this Agreement are, however, assignable by Owner. The Architect/Engineer shall not, in connection with any assignment by the Owner be required to execute any documents that increase the Architect/Engineer's contractual or legal obligations or risks, or the availability or costs of its professional or general liability insurance.

Article 12 Extent of Agreement

This Agreement supersedes all prior agreements, written or oral, between Architect/Engineer and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Owner and Architect/Engineer.

Article 13 Business Ethics Expectation

13.01 During the course of pursuing contracts with Owner and while performing contract work in accordance with this Agreement, Architect/Engineer agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the Owner's best interests.

13.02 Architect/Engineer shall take reasonable actions to prevent any actions or conditions which could result in a conflict with Owner's best interests. These obligations shall apply to the activities of Architect/Engineer's employees, agents, subconsultants, subconsultants' employees and other persons under their control.

Architect/Engineer's employees, agents, subconsultants (and their representatives) shall not make or offer, or cause to be made or offered, any cash payments, commissions, employment, gifts valued at \$50 dollars or more, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to Owner's representatives, employees or their relatives.

Architect/Engineer's employees, agents and subconsultants (and their relatives) shall not receive or accept any cash payments, commissions, employment, gifts valued at \$50 dollars or more, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of contractors, subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the Project.

13.03 Architect/Engineer agrees to notify Vergel L. Gay, Jr., Chief Facilities Planning and Construction Officer for Facilities Planning & Construction within 48 hours of any instance where the Architect/Engineer becomes aware of a failure to comply with the provisions of this article.

13.04 Upon request by Owner, Architect/Engineer agrees to provide a certified Management Representation Letter executed by a Architect/Engineer representative selected by Owner in a form agreeable to Owner stating that the representative is not aware of any situations violating the business ethics expectations outlined in this Agreement or any similar potential conflict of interest situations.

13.05 Architect/Engineer agrees to include provisions similar to this Article in all contracts with subconsultants receiving more than \$25,000 in funds in connection with the Project.

Article 14 **Miscellaneous Provisions**

14.1 **Captions.** The captions of articles and paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

14.2 **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas, without giving effect to principles of conflicts of law.

14.3 **Waivers.** No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

14.4 **Severability.** In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included.

14.5 **Independent Contractor.** Architect/Engineer acknowledges that it is engaged as an independent contractor and that Owner has no responsibility to provide Architect/Engineer or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Architect/Engineer is not, and will not claim to be, an officer, partner, employee or agent of Owner and shall not make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but

not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Architect/Engineer hereby agrees to make Architect/Engineer's own arrangements for any of such benefits as Architect/Engineer may desire and agrees that Architect/Engineer is responsible for all income taxes required by applicable law.

14.6 Child Support Certification. A child support obligor who is more than 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 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

14.7 Eligibility Certification. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the Specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: "Under Section 2155.004, *Texas Government Code*, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

14.8 Franchise Tax Certification. If Architect/Engineer is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Architect/Engineer certifies that it is not currently delinquent in the payment of any franchise taxes or that Architect/Engineer is exempt from the payment of franchise taxes.

14.9 Payment of Debt or Delinquency to the State. Pursuant to Section 2252.903, *Texas Government Code*, Architect/Engineer agrees that any payments owing to Architect/Engineer under this Agreement may be applied directly toward certain debts or delinquencies that Architect/Engineer owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

14.10 Loss of Funding. Performance by Owner under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds then Owner will issue written notice to Architect/Engineer and Owner may terminate this Agreement without further duty or obligation hereunder. Architect/Engineer acknowledges that appropriation of funds is beyond the control of Owner.

14.11 Proprietary Interests. All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Architect/Engineer in the performance of services for Owner, which is not generally known to the public, shall be confidential, subject, however, to the Owner's obligations under the Texas Public Information Act.

Architect/Engineer shall not, beginning on the date of first association or communication between Owner and Architect/Engineer and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Architect/Engineer's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Architect/Engineer shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Architect/Engineer as an independent contractor of Owner in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of Owner. Architect/Engineer shall obtain agreements similar to those contained in this Paragraph from persons, vendors and consultants retained by Architect/Engineer. Architect/Engineer acknowledges and agrees that a breach by Architect/Engineer of the provisions hereof will cause Owner irreparable injury and damage. Architect/Engineer, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this agreement. This section shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Architect/Engineer from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Architect/Engineer to defend itself from any suit or claim.

14.12 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Architect/Engineer a representative to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. Architect/Engineer shall act only upon instructions from such representative unless otherwise specifically notified to the contrary.

14.13 Dispute Resolution.

14.13.1 The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Owner and Architect/Engineer to attempt to resolve any claim for breach of contract made by Architect/Engineer that cannot be resolved in the ordinary course of business. Architect/Engineer shall submit written notice of a claim of breach of contract under this Chapter to the Chancellor of The Texas A&M University System, who shall examine Architect/Engineer's claim and any counterclaim and negotiate with Architect/Engineer in an effort to resolve the claim.

14.13.2 Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Architect/Engineer, in whole or in part. Owner and Architect/Engineer agree that any periods set forth in this Agreement for notice and cure of defaults are not waived, delayed, or suspended by Chapter 2260 or this Paragraph 14.13.

14.13.3 It is agreed that such process is not invoked if Owner initiates the dispute by first bringing a claim against Architect/Engineer, except at Owner's

sole option. If Owner makes a claim against Architect/Engineer and Architect/Engineer then makes a counterclaim against Owner as a claim under Chapter 2260 and in compliance therewith, the Owner's original claim against Architect/Engineer does not become a counterclaim and is not subject to the mandatory counterclaim provisions of Chapter 2260 of the *Texas Government Code*, except at the sole option of the Owner.

14.14 Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner:

Randy Wipke, Area Manager
Facilities Planning and Construction Department
The Texas A&M University System
200 Technology Way, Suite 1162
College Station, Texas 77845-3424

With Copies to:

Vergel L. Gay, Jr., Chief Facilities Planning and Construction Officer
Facilities Planning and Construction
The Texas A&M University System
200 Technology Way, Suite 1162
College Station, Texas 77845-3424

If to Architect/Engineer: [Name]
 [Company Name]
 [Address]
 [City, State, Zip Code]

or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

14.15 Authority to Act. Architect/Engineer warrants, represents, and agrees that (1) it is a duly organized and validly existing legal entity in good standing under the laws of the state of its incorporation or organization; (2) it is duly authorized and in good standing to conduct business in the State of Texas; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and (4) the individual executing this Agreement on behalf of Architect/Engineer has been duly authorized to act for and bind Architect/Engineer.

14.16 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed, construed and considered to be an original, but all of which shall constitute one and the same instrument.

14.17 Venue. This Agreement is performable in the county in which the Project is located. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against Owner shall be in the county in which the primary office of the chief executive officer of Owner is located.

14.18 Non-Waiver Provisions. Owner expressly acknowledges that Owner is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Owner of its right to claim such exemptions, privileges, and immunities as may be provided by law.

14.19 Previous Employment. Architect/Engineer acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits Owner from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If Architect/Engineer is an individual, by signing this Agreement, Architect/Engineer certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

Article 15

Other Conditions or Services

The Owner and Architect/Engineer hereby agree to the full performance of the covenants contained herein.

15.1 Basic Services. The Architect/Engineer's Basic Services are those services described in paragraphs 1.2 through 1.6 for which compensation shall be the Basic Services Fee described in this Agreement and shall include the following disciplines:

[Project Manager please select appropriate services to be added to or subtracted from this list. Also, refer to Paragraph 14.2. and select any appropriate services which should be added to this list as a Basic Service. (i.e. a laboratory consultant for a Lab building or acoustical engineer for a Performance Facility)]

- a. Architectural Services
- b. Landscape Architectural Services
- c. Civil Engineering Services
- d. Structural Engineering Services
- e. Mechanical Engineering Services
- f. Electrical Engineering Services
- g. Plumbing Engineering Services
- h. Audio Visual/Data & Telecommunications Engineering
- i. Other Consultants as required by the Project

[Project Manager should list the other consultants required.]

15.2 Reimbursable Services. The services identified in the following list are not included in Basic Services.

[Project Manager, review and EDIT the following list for POSSIBLE inclusions in Reimbursable Services.]

- a. Site Survey
- b. Geotechnical Investigation
- c. Rendering(s), animations, simulations and/or Scale Model
- d. Programming Services
- e. Registration and documentation of Project for LEED Certification
- f. Commissioning Services
- g. Hazardous Material Abatement Services
- h. Use of Registered Accessibility Specialist for preliminary plan reviews
- i. Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites.
- j. Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.
- k. Providing services to make detailed investigation of existing conditions or facilities or to make measured drawings thereof, other than to verify the accuracy of drawings or other information furnished by the Owner.
- l. Providing financial feasibility or other special studies.
- m. Making extensive investigations, surveys, valuations, inventories or detailed appraisals of existing facilities, except as otherwise required by this Agreement, and services required in connection with construction performed by the Owner.
- n. Energy modeling
- o. Interference and Clash Detection

15.3 Basis of Compensation

15.3.1 Basic Services.

The initial Amount Available for the Construction Contract (AACC) for the Project is

_____ (\$_____).

The negotiated Basic Services Fee for the Project is

_____ (\$_____).

The Owner may amend the AACC after the Architect/Engineer completes the Program of Requirements and the Owner authorizes the commencement of Basic Services. If the AACC is amended by Owner, and Architect/Engineer has been notified in writing of such AACC, then this

paragraph shall be deemed to be amended by including such AACC amount as the cost referenced to in the first sentence of this paragraph. The AACC will be confirmed or re-established at the completion of the Design Development Phase.

[Project Manager please review and EDIT the following list to match Paragraph 14.]

15.3.2 Reimbursable Services.

Programming Services:	Not to Exceed \$ _____
Site Survey:	Not to Exceed \$ _____
Geotechnical Investigation:	Not to Exceed \$ _____
Registered Accessibility Specialist	Not to Exceed \$ _____
Hazardous Material Abatement Services	Not to Exceed \$ _____
Commissioning Services	Not to Exceed \$ _____
Rendering(s) and/or Scale Model:	Not to Exceed \$ _____

The maximum allowable cost on this Project for Reimbursable Services identified in Article 5 as approved by the Owner is:

Maximum Reimbursable Expense Amount: \$ _____

15.3.3 Maximum Contract Sum

Basic Services Fee amount (Para 15.3.1)	\$ _____
<i>plus</i>	
Maximum Reimbursable Expense Amount (Para 15.3.2)	\$ _____
MAXIMUM CONTRACT SUM:	\$ _____

[Project Manager edit as appropriate.]

15.4 Progress Payments. Payments for Basic Services shall be made as provided in Article 7 in accordance with the following schedule:

Schematic Design Phase:	15%
Design Development Phase:	20%
Construction Documents Phase:	40%
Bidding or Negotiation Phase:	5%
Construction Phase:	18%
Record Drawings	2%

15.5 Review Stages. The Architect/Engineer shall submit documents to the Owner for review at completion of the Schematic Design Phase, Design Development Phase and at the following stages of completion of the Construction Documents Phase as follows: [Project Manager to determine which review milestones during construction documents]

25%, 50%, 75%, 100%

15.6 Estimated Construction Costs. The Architect/Engineer shall submit Estimated Construction Costs as described in Subparagraph 1.1.19 at completion of the Schematic Design Phase, Design Development Phase and at the following stages of completion of the Construction Documents Phase: [Project Manager to determine which milestones during construction documents to require ECC]

25%, 50%, 75%, 100%.

15.7 Review Documents. The Architect/Engineer shall, at its expense, furnish and deliver to the Owner for Owner's review, the following number of sets of review documents at the required review stages: [Insert number of review sets for each milestone]

Schematic Design: _____ sets
Design Development: _____ sets
Construction Documents: _____ sets for 25%, 50% & 75% complete
Construction Documents: _____ sets for 100% complete

[SIGNATURES PROVIDED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first written above.

BOARD OF REGENTS OF
THE TEXAS A&M UNIVERSITY SYSTEM
(THE OWNER)

(THE ARCHITECT/ENGINEER)

Federal Tax I.D. No. _____

By _____
Chief Facilities Planning and Construction
Officer

By _____
(Signature)

(Print or Type Name)

Date _____

Date _____

APPROVAL RECOMMENDED:

Director of Project Delivery
Facilities Planning and Construction

The Texas Board of Architectural
Examiners, PO Box 12337, Austin, Texas
78711 or 333 Guadalupe, Suite 2-350,
Austin, Texas 78711, telephone (512) 305-
9000, has jurisdiction over complaints
regarding individuals licensed under
Chapter 1051, Texas Occupations Code.

Date _____

Name(s) of individual(s), sole proprietors,
partner(s), shareholder(s) or owner(s) with
an ownership interest of at least 25% of the
business entity executing this Contract.

APPROVED AS TO FORM:

General Counsel

Name: _____

Name: _____

Name: _____

Date _____

Name: _____

The following Exhibits are fully incorporated into this Agreement by reference:

[Project Manager completes this list as appropriate to this agreement. Also edit the front index to align the Exhibits section with the list below after final editing:]

EXHIBITS

Ex A Personnel Titles and Hourly Rates
Ex B Statement for Architectural/Engineering Services
Ex C HSP - Prime Contractor Progress Assessment Report
Ex D BIM Execution Plan

EXHIBIT A
PERSONNEL TITLES AND HOURLY RATES

The prime architectural or engineering firm for this project will assemble the following information from consulting team members associated with the project. The categories of personnel indicated should be edited to include only those expected to be actually working on this project. When preparing this schedule, you are expected to adhere to the position classifications and titles presented to the greatest extent possible. Additional consultant listings and/or position classifications may be added as needed or required by the project.

[Project Manager can supply A/E this Exhibit in Microsoft Word format for editing]

<u>Firm/Position Classification</u>	<u>Hourly Billing Rate</u>
Architecture [Name of Firm]	
Principal	\$ _____
Associate Principal	_____
Project Manager	_____
Project Architect I	_____
Project Architect II	_____
Project Designer	_____
Construction Administrator	_____
Intern Architect	_____
CADD Technician	_____
Administrative Staff	_____
 Design Architecture [Name of Firm]	
Principal	\$ _____
Associate Principal	_____
Project Manager	_____
Project Architect I	_____
Project Architect II	_____
Project Designer	_____
Construction Administrator	_____
Intern Architect	_____
CADD Technician	_____
Administrative Staff	_____
 MEP Engineering [Name of Firm]	
Principal	\$ _____
Associate Principal	_____
Senior Project Manager	_____
Project Manager	_____

Senior Engineer	_____
Engineer	_____
Graduate Engineer	_____
Engineering Designer	_____
Construction Administrator	_____
CADD Technician	_____
Administrative Staff	_____

Structural Engineering [Name of Firm]

Principal	\$ _____
Associate Principal	_____
Senior Project Manager	_____
Project Manager	_____
Senior Engineer	_____
Engineer	_____
Graduate Engineer	_____
Engineering Designer	_____
Construction Administrator	_____
CADD Technician	_____
Administrative Staff	_____

Civil Engineering [Name of Firm]

Principal	\$ _____
Associate Principal	_____
Senior Project Manager	_____
Project Manager	_____
Senior Engineer	_____
Engineer	_____
Graduate Engineer	_____
Engineering Designer	_____
Construction Administrator	_____
CADD Technician	_____
Administrative Staff	_____

Landscape Architecture [Name of Firm]

Principal	\$ _____
Landscape Architect	_____
Administrative Staff	_____

Cost Consultant [Name of Firm]

Principal	\$ _____
Senior Estimator	_____

Estimator
Administrative Staff

Data/Telecommunications Consultant [Name of Firm]

Principal
Associate
Senior Consultant
Consultant
Designer
Contract Administrator
CADD Technician
Administrative Staff

\$ _____

Acoustical/Audio-Visual Consultant [Name of Firm]

Principal
Associate Principal
Senior Consultant
Consultant
Designer
Contract Administrator
CADD Technician
Administrative Staff

\$ _____

Laboratory Consultant [Name of Firm]

Principal
Laboratory Consultant
Laboratory Design Engineer
Technical Coordinator
Laboratory Programmer
Laboratory Designer
Production Coordinator
CADD Technician
Technical Writer
Administrative Staff

\$ _____

Security Consultant [Name of Firm]

Principal
Project Director
Project Manager
Project Consultant
Project Engineer
CADD Technician
Administrative Staff

\$ _____

EXHIBIT B
STATEMENT FOR ARCHITECTURAL/ENGINEERING SERVICES

Statement No. _____ for the period ended _____,

for services provided in accordance with A/E Agreement dated _____.

Professional Liability Insurance Policy expiration date:

I. BASIC SERVICES

Amount Available for the Construction Contract \$

Services Performed to Date:

<u>Phase</u>	<u>Fee</u>	<u>Amount</u>	<u>% Complete</u>	<u>This Application</u>	<u>Total Earned To Date</u>
Schematic Design	15%	\$	%	\$	\$
Design Development	20%	\$	%	\$	\$
Construction Documents	40%	\$	%	\$	\$
Bidding or Negotiation	5%	\$	%	\$	\$
Construction Phase	18%	\$	%	\$	\$
Record Drawings	2%	\$	%	\$	\$
Sub-Total			%	\$	\$

Amount Previously Billed deduct \$

Net Amount Due This Statement \$

II. REIMBURSABLE SERVICES

Expenses to Date (Append Supplemental Material)

<u>Type</u>	<u>Amount</u>	<u>This Application</u>	<u>Total Earned To Date</u>
(List Items)	\$	\$	\$
Sub-Total		\$	\$

Amount Previously Billed deduct \$

Net Amount Due This Statement \$

EXHIBIT B

III. ADDITIONAL SERVICES

Services Performed to Date: (Append Supplemental Material)

<u>Authorization</u>	<u>Amount</u>	<u>% Complete</u>	<u>This Application</u>	<u>Total Earned To Date</u>
(Amendment, letter of agreement, etc.)	\$	%	\$	\$
	\$	%	\$	\$
	\$	%	\$	\$
Sub-Total			\$	\$
Amount Previously Billed		deduct		\$
Net Amount Due This Statement				\$

RECAPITULATION

	<u>Net Amount Due This Statement</u>	<u>Total Earned To Date</u>
I. BASIC SERVICES	\$	\$
II. REIMBURSABLE SERVICES	\$	\$
III. ADDITIONAL SERVICES	\$	\$
TOTAL AMOUNT EARNED THIS STATEMENT	\$	
TOTAL AMOUNT PREVIOUSLY BILLED (deduct)	\$	
TOTAL AMOUNT DUE THIS STATEMENT	\$	

I certify that the above Statement is correct and now due.

_____ Signature	_____ Title	_____ Date
--------------------	----------------	---------------

Recommended Approval:

_____ Signature	_____ Date
--------------------	---------------

Approved by FPC Project Manager:

_____ Signature	_____ Date
--------------------	---------------

EXHIBIT "C"
HSP - Prime Contractor Progress Assessment Report

Available at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

A completed copy of this form shall be submitted with each Statement for Architectural/Engineering Services

EXHIBIT “D” BIM Execution Plan

Introduction

Building Information Modeling (BIM) is an emerging information technology having a profound impact on traditional design and construction deliverables. When implemented properly, BIM is an enabler. BIM optimizes and integrates otherwise fragmented workflows and communication in project execution. BIM supports a lifecycle view of information re-use in design, to sustainability, analysis to estimating, detailing, fabrication to pre-assembly, and commissioning to operations. When placed within the larger context of Virtual Design and Construction (VDC) and Lean Construction, BIM represents a collective set of tools, information strategies, and workflows that enable more integrated decision making, sustainable and re-usable information, higher quality documentation, and waste reduction in manpower, resources and materials.

The positive impact of BIM is readily apparent and the Texas A&M University System through its Facilities Planning and Construction department (FPC) is moving to BIM for project delivery. To support this goal FPC requires the use of IFC compliant parametric Building Information Modeling (BIM) software as the architectural/engineering tool for all new major construction projects and renovations starting design in summer 2009.

This BIM requirement is informational rather than application specific. The goal is about using interoperable and sustainable information strategies and tools. Several BIM authoring applications in today's marketplace meet the BIM capability that FPC expects from A/Es and contractors working on projects.

At an owner level, BIM supports a systems approach to information creation. This information is useful to A&M System Member operations. This extended and automated use of project information requires that FPC become more involved in the data standards used in BIM authoring by its A/E providers. The normalization of data is fundamental for BIM interoperability and data re-use and a requirement of BIM use on FPC projects.

BIM Goals and Uses

Support the design and validation of high performance and sustainable buildings

The design of all new A&M University System buildings must comply with all state laws and guidelines pertaining to energy use and high performance design requirements and employ sustainable design principles based on LEED 2009. BIM enables rapid prototyping of design alternatives and performance analyses among the different disciplines. BIM integrates site and discipline data, helping the team make better decisions on options impacting the building energy use and future operations.

The A/E shall utilize energy and daylighting modeling tools to develop comparative energy analysis of the concept models and subsequent models throughout the design process

Provide higher quality documentation

In BIM, the computer is used to automate some coordination activities that traditionally represented individual tasks that expended project resources and were prone to error. When used correctly BIM generates and coordinates the plans, sections, elevations, dimensions, schedules and quantities, and sheet view coordination. When data is integrated within BIM objects and elements, additional information can be generated or **derived** from the model. This derived information is critical to BIM use and represents a process change. It is this automated and coordinated generation of project relevant information that supports higher quality documentation.

The A/E shall utilize the software tools to compare and verify spaces in the model(s) with the spaces in the approved Program of Requirements.

The A/E shall utilize model coordination and checking software tools throughout the design process.

The A/E shall extract quantity information from the model(s) to support comparative cost analysis of options and as an aid to the contractor.

Streamline the design and construction delivery process

BIM, used in all phases of project delivery provides the designer and stakeholders with a clearer understanding of the project. BIM does not have the same ambiguities inherent in the interpretation of 2D information. Visual explanations of complex issues support clearer communication with team and non-professional stakeholders. This helps reduce time wasted on non-value add activities. Designers and contractors can see non-obvious relationships and their impact on the project earlier in the process than in a traditional CAD process. BIM combined with interference and model checking at pre-defined times and across disciplines finds errors in the model(s) and reduces the number of change orders in the field.

The A/E shall utilize the model(s) at all presentations to aid in decision making with users and FPC.

The A/E in collaboration with the contractor shall utilize software tools and the model(s) to explore construction phasing.

The contractor is encouraged to utilize software modeling tools to derive fabrication model(s) during construction.

Provide project data to support the building lifecycle

BIM data developed and used during the project is capable of supporting building lifecycle analysis and needs. Today this data is too often re-created and/or not available in a timely manner for analysis and decision making. FPC expects the sharing of BIM information

between participants during the project in re-usable forms. At the end of the project the data and models shall be considered the property of the A&M University System.

The A/E shall update the model(s) incorporating construction information to record model(s)

The A/E shall develop a COBIE data file for all equipment incorporated into the project for input into the campus computerized maintenance management system

BIM Requirements

Current FPC requirements are written from a CAD perspective. Many of these CAD/NCS standards transition easily into BIM authoring tools, however some do not. FPC recognizes that strict adherence to 2D drawing symbology may be counter-productive to the efficient use of BIM.

Naming of Models

Model files shall be named according to the facility name assigned by FPC. When a model is broken apart it shall be done in a logical spatial way such as wing or floor or building system. Building systems shall be defined using Unifomat or OmniClass.

Object/Element use in Modeling

An object/element matrix shall be used to help define information requirements for model(s). Objects/elements will carry data for analysis and to support derived data.

Dimensional Accuracy of Models

Models and derived plans, sections and elevations are being used to directly input dimensional and geometric information to downstream users. Tools exist to do floor layouts from drawings, and shop drawings are being generated from BIMs. Dimensional accuracy is critical for downstream needs. Traditional dimensioning using EQ/EQ, etc. shall not be used. All dimensions shall have an accuracy of 1/8" or less.

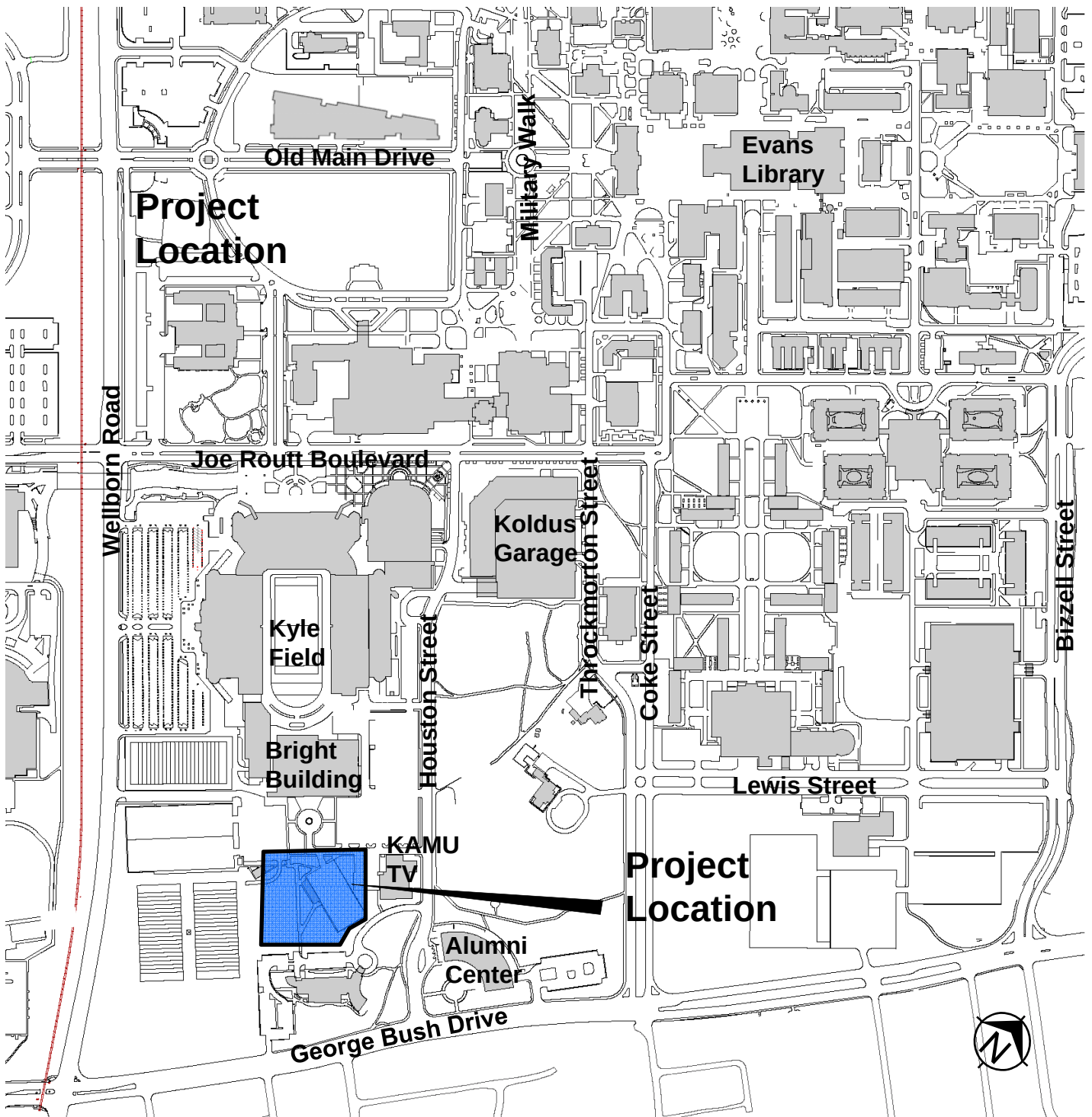
A clearly define method of modeling space is required to accurately derive space and volume calculations from the model. Areas bounded by walls shall be modeled to face of wall. Area volumes shall be model to height of drop ceiling and a second volume for plenum space should one be designed. (Supports energy analysis)

Objects Modeled

Model all mechanical, plumbing and electrical elements 2 inches and larger in diameter for Design Development and Construction Documents.

REVISIONS

[illegible]



Sports Performance Center

Texas A&M University

Project No. 2-3098

Attachment C

THE TEXAS A&M UNIVERSITY SYSTEM

HUB SUBCONTRACTING PLAN

for

PROFESSIONAL SERVICES

(Firm Name)

(Address)

(City/State/Zip Code)

(Telephone)

(Fax)

for

Sports Performance Center

Texas A&M University

College Station, Texas

Project No. 02-3098

I. System statement on Utilization of Historically Underutilized Businesses (HUBs)

In accordance with the Texas Government Code, Sections 2161.181-182 and Texas Administrative Code (TAC) Title 34, Section §20.11, state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction services, including professional and consulting services and commodities contracts. Comptroller of Public Accounts HUB Rules, TAC Sections §20.11-§20.28 encourages the use of HUBs by implementing these policies through race, ethnic and gender-neutral means.

The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study:

1. 11.9% for heavy construction other than building contracts;
2. 26.1% for all building construction, including general contractors and operative builders contracts;
3. 57.2% for all special trade construction contracts;
4. 20% for professional services contracts;
5. 33% for all other services contracts; and
6. 12.6% for commodities contracts.

A Historically Underutilized Business (HUB) is defined by statute as an entity with its principal place of business in this state that is: (a) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons who are economically disadvantaged because of their identification as members of certain groups, including African Americans, Hispanic Americans, women, Asian Americans and Native Americans and have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control; and have a proportionate interest and demonstrate active participation in the control operation and management of the corporation's affairs; (b) a sole proprietorship created for the purpose of making a profit that is 100% owned, operated, and controlled by a person described in subdivision (a) of the subsection; (c) a partnership formed for the purpose of making a profit in which 51% of the assets and interest in the partnership is owned by one or more persons and demonstrate active participation in the control, operation and management of the partnership's affairs; (d) a joint venture in which entity in the joint venture is a HUB under this subsection; or, (e) a supplier contract between a HUB under this subsection and a prime contractor under which the HUB is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies.

The System shall make a good faith effort to meet or exceed the State of Texas Disparity Study goals and to assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year. It is the policy of The System to contract directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F and Comptroller of Public Accounts HUB Rules, TAC Section § 20.14.

The total expected value of this contract is \$100,000 or more and The System has determined that subcontracting opportunities are probable for this contract. Therefore, the Respondent is required to submit a HUB Subcontracting Plan (HSP) with their proposal. The Respondents will use the procedures prescribed in Article II when developing the HSP.

All Respondents must give clear evidence that good faith effort was made to comply with the HUB requirements identified in TAC, Section §20.14, and the HSP shall include the documents shown in Article II, Paragraphs 4.b.i, ii and iii.

The Owner will review the information/documentation and use it as a basis to determine if a good faith effort was made by the Respondent to utilize HUB subcontractors/suppliers on this contract. If it is determined that a good faith effort was not made, the Respondent's submittal/proposal will be determined to be non-responsive and the submittal/proposal shall be rejected and the reasons for rejection recorded in the project files. An accepted HUB Subcontracting Plan will become a part of any contract with the Respondent resulting from this solicitation and then can only be modified by contract change order.

If the Respondent can perform and intends to complete all subcontracting opportunities with its own employees and resources without using any subcontractors, the HSP submitted with the Respondent's submittal/proposal shall only include the documents shown in Article II, Paragraphs 4.c.i, ii and iii.

For information regarding the Texas A&M University System HUB Program and HUB Subcontracting requirements, please contact Mr. Don Barwick, Manager, HUB and Procurement Programs, DBarwick@tamu.edu, (979) 458-6410

II. HUB SUBCONTRACTING PLAN (HSP) PROCEDURES

The following procedures are specified pursuant to the Comptroller of Public Accounts HUB Rules, TAC, Title 34, Sections §20.13-§20.14:

1. The Texas A&M University System (System), when entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine if it is probable for subcontracting opportunities under the contract.
2. If subcontracting opportunities are not probable, the System's bids, proposals, offers, or other applicable expression of interest shall include a statement attesting that it has determined that subcontracting opportunities are not probable under the contract.
3. If subcontracting opportunities are probable, the System shall state such probability in its announcements for bids, proposals, offers, or other applicable expression of interest and require the submission of a HUB Subcontracting Plan (HSP). The HSP will become a provision of a contract, if awarded by the Owner.
4. **The State of Texas HUB Subcontracting Plan forms can be accessed on the following website and completed on-line at:**

<http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

This will access the State of Texas HUB Forms Library and the HSP forms. **PLEASE NOTE that page 2 of the HSP forms must be replicated for EACH of the categories to be subcontracted by the respondent, regardless of who is performing the subcontracted services.**

The State of Texas HSP website forms can be completed electronically and printed or downloaded and have the required information entered by hand or typewriter.

- a. An HSP is required as part of bids, proposals, offers, or other applicable expression of interest valued at \$100,000 or more. Responses that do not include the HSP or if the agency determines that the HSP was not developed in good faith, shall be rejected as a material failure to comply with the advertised specifications.
- b. When the System has determined that subcontracting opportunities are probable, Respondent's bids, proposals, offers, or other applicable expression of interest will include:
 - i. Cover sheet, Page 1
 - ii. Letter of transmittal attesting that the respondent has read and understands the Policy on Historically Underutilized Businesses (see Attachment A within this attachment);
 - iii. State of Texas Historically Underutilized Business Subcontracting Plan that shows how the respondents made a good faith effort by completing sections

1 thru 10 of the HSP, identifies **ALL** subcontracting categories, and makes a good faith effort for each subcontracting category identified. (See State of Texas HSP Form)(See Attachment B1 within this attachment).

- c. When the System has determined that subcontracting opportunities are probable, but the respondent can perform and intends to complete all the subcontracting opportunities with its employees and resources without any subcontractors, the HSP shall include:
 - i. Cover sheet, Page 1
 - ii. Letter of transmittal attesting that the respondent has read and understands the System's Policy on HUBs; and
 - iii. Self Performance form which attests that the respondent shall perform the subcontracting opportunities identified by the agency, with its own employees and resources (See State of Texas HSP Form, page 3, Sections 9 and 10).

Note: If the contractor decides after the award to subcontract any part of the contract, the contractor must notify the System. The contractor must comply with the good faith effort requirements relating to developing and submitting a subcontracting plan before any modifications or performance of the awarded contract involving subcontracting can be authorized by the System.

- 5. The System shall require a respondent to state whether it is a Texas certified HUB.
- 6. To meet The A&M System's good faith effort requirements, the respondents shall follow, but is not limited to, procedures listed below when developing an HSP:
 - a. Divide the contract work into reasonable portions to the extent consistent with prudent industry practice.
 - b. Meet and/or exceed 20% for professional service related subcontracting opportunities.
 - c. Provide written justification of the selection process if a non-HUB subcontractor is selected.
 - d. Provide notice to minority or women trade organizations or development centers that assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants. The notice shall, in all instances, include the scope of work, information regarding location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. Respondent must provide notice to organizations or development centers not less than five (5) working days prior to submission of the response (bid, proposal, offer, or other applicable expression of interest).
 - e. Notify HUBs of the subcontracting opportunities that the respondent intends to subcontract. The preferable method of notification shall be in writing. The notice shall, in all instances, include the items contained in paragraph 6.c above. The notice shall be provided to potential HUB subcontractors prior to submission of the respondent's response.

- f. The respondent shall provide potential HUB subcontractors reasonable time to respond to the respondent's notice. "Reasonable time to respond" in this context is no less than five (5) working days from receipt of notice, unless circumstances require a different time period, which is determined by the agency and documented in the contract file.
- g. The respondent shall use the State of Texas Centralized Master Bidders List (CMBL), HUB Directory, internet resources, and/or other directories as identified by the State of Texas or the A&M System Office of HUB & Procurement Programs when searching for HUB subcontractors. Respondent may rely on the services of minority, women, and community organizations, contractor groups, local, state, and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program who are able to provide all or select elements of the HUB subcontracting plan.

NOTE: A complete list of all certified HUBs may be electronically accessed through the Internet at

<http://www.window.state.tx.us/procurement/cmb/cmbhub.html>

Click "Search for Vendors" Link.

- h. In addition to any effort as described above, the A&M System has included a list at <http://www.tamus.edu/offices/fpc/forms> titled "CMBL Professional Services Subcontractors List". The A&M System strongly encourages the solicitation of these vendors in addition to the good faith effort requirement by the State of Texas.
 - i. The respondent shall provide the notice described in this section to **five (5) or more** HUBs for **each** subcontracting opportunity that provide the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and/or employees. **The A&M System encourages respondents to seek and find a "Diverse Group" of Historically Underutilized Businesses in each category in which a subcontract of services is solicited.**
 - j. Documentation showing correspondence between prime and potential HUB subcontractors includes but not limited to contact information, date of delivery confirmation, etc.
7. In making a determination whether a good faith effort has been made in the completion of the required HUB subcontracting plan, the System shall require the respondent to submit supporting documentation explaining the ways the respondent has made a good faith effort according to each criterion listed above. The documentation shall include at least the following:
- a. Whether the respondent divided the contract work into reasonable portions in accordance with prudent industry practices by showing each subcontracting category.
 - b. Whether the respondent met or exceeded 20% for professional services subcontracting opportunities.

- c. Whether the respondent sent notices containing adequate information about bonding, insurance, the plans, the specifications, scope of work, and other requirements of the contract to **five(5) or more** qualified HUBs for **each** subcontracting opportunity allowing reasonable time for HUBs to participate effectively.
 - d. Whether the respondent negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder.
 - e. Whether the respondent provided notice to minority or women trade organizations or development centers that assist in identifying HUBs by disseminating opportunities to their membership/participants.
 - f. A list of all vendors, including HUBs not listed in the HSP form who responded.
8. The submission of a protégé as a subcontractor in the HSP, when the respondent is a participant in a Mentor Protégé Program under the Texas Government Code §2161.065, will constitute a good faith effort for the particular work to be subcontracted with the protégé. The respondent must submit a copy of the Mentor Protégé Agreement that has been entered into by the respondent (mentor) and a certified HUB (protégé) as part of their HSP. The Mentor Protégé Agreement must be a fully executed agreement that has been registered with the State of Texas prior to submitting the HSP. The HSP must also identify the work that will be performed by the protégé.
9. Prior to contract award, the HSP and supporting documentation shall be reviewed and evaluated by the Office of HUB and Procurement Programs (HUB Office) to determine if a good faith effort has been made in accordance with bid specifications and State of Texas HUB rules. If accepted, the HSP shall become a provision of the System contract. Any change in a subconsultant or vendor, as requested by the Respondent, will not reduce the HUB participation level presented in the initial proposal offering.
10. If the HUB Office determines that a submitted HSP was not developed in good faith, the HUB Office shall treat the lack of good faith as a material failure to comply with advertised specifications, and the subject bid or other response shall be rejected. The reason(s) for rejection shall be recorded in the procurement file.
11. If at any time during the term of the contract, it becomes necessary to make a change to the approved HSP, such proposed change must be received for review and approval by the HUB Office before the change will be effective under the contract. The architect/engineer (A/E) must comply with provisions of TAC §20.14 relating to development and evaluation of HSP, in order to substitute or subdivide the work and/or substitute or add subconsultants prior to any alteration of the HSP. The System shall document changes to the HSP by contract change order. The reasons for proposed change(s) shall be requested on a Form C-27b *Consultant/Subcontractor Substitution Form* (See Attachment C of the HSP) and recorded in the procurement file. In the event that a change is necessary, the requested changes will not reduce the level of HUB participation that was a part of the proposal at the time of construction contract award.
12. If a respondent has determined that it can perform all of the contract, the respondent must sign an affidavit (State of Texas HUB Form, page 3, Sections 9 and 10) and provide a

statement explaining how the respondent intends to complete the contract with its own equipment, supplies, materials and/or employees submitted with the respondent's bid, proposal, offer, or other expression of interest.

If a respondent has determined it will perform all work with its own equipment, supplies, materials, and/or employees, etc., the respondent must agree to provide the following if requested by the System:

- a. evidence of existing staffing to meet contract objectives,
- b. monthly payroll records showing company staff fully engaged in the contract,
- c. onsite reviews of company headquarters or work site where services are to be performed, and
- d. documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the work.

If the A/E selected decides to subcontract any part of the contract after the award, the A/E must comply with provisions of this document relating to developing and submitting a subcontracting plan prior to any modifications or performance involving subcontracting work can be authorized by the System. If the A/E subcontracts any of the work without prior authorization and without complying with TAC Section §20.14, the A/E is deemed to have breached the contract and be subject to any remedial actions provided by Texas Government Code, Chapter 2161, and TAC §20.14. The System may report non-performance relative to its contracts to the Comptroller of Public Accounts in accordance with TAC Chapter §113, Subchapter F (relating to the Vendor Performance and Debarment Program).

13. The A/E will be required to submit a revised HSP for additional subcontracting opportunities that were not identified in the original HSP and created when the original scope of work expands through a change order, contract amendment or a contract renewal.
14. The System requires a respondent to whom a contract has been awarded, to report to the System the identity and the amount paid to its subconsultants, HUBs and non-HUBs. If the A/E fails to fulfill the HSP specified in the contract, the System shall notify the A/E of any deficiencies. The System shall require the A/E to submit documentation and explain why the failure to fulfill the HUB Subcontracting Plan should not be attributed to a lack of good faith effort by the A/E.
15. If a determination is made that the A/E failed to implement the HSP in good faith, the System, in addition to any other remedies, may report nonperformance to the Comptroller of Public Accounts in accordance with TAC, Chapter 113, Subchapter F (relating to Vendor Performance and Debarment Program).
16. During the term of the contract, the System shall determine whether the value of the subcontracts to HUBs meets or exceeds the HSP provisions specified in the contract.

Reporting Requirements

Each A/E that enters into a contract shall report to the System all subcontracting/supplier payments. The report will include the volume of work performed under the contract, the portion of the work that was performed with its own employees/resources, HUB and Non-HUB subconsultants and suppliers (See HSP Prime Contractor Progress Assessment Report Form,

Attachment B-2 of the HSP). The System may request payment documentation in accordance with the Comptroller of Public Accounts HUB Rules that confirms the performance of the A/E. During the course of the contract, the System shall discuss the performance of the A/E and document the A/E performance in the contract file.

Note: When the prime A/E is a HUB, it must perform at least 25% of the total value of the contract with its own or leased employees, as defined by the Internal Revenue Service, in order for the Owner to receive 100% HUB credit for the entire contract.

If a HUB prime contractor's HSP identifies that it is planning to perform less than 25% of the total value of contract with its own or leased employees, the HUB A/E must report to the Owner the value of the contract that was actually performed by the HUB prime A/E and the amount to be performed by its HUB subcontractors.

The HUB Office shall audit the A/E's compliance with the HSP. If the A/E is found deficient, the System shall give the A/E an opportunity to submit documentation and explain to the System why the failure to fulfill the HSP should not be attributed to a lack of good faith effort by the A/E.

(Attachment A)

(SUBMIT ON YOUR BUSINESS LETTERHEAD)

Don Barwick |
Manager, HUB and Procurement Programs
The Texas A&M University System
A&M System Building
200 Technology Way, Suite 1267
College Station, Texas 77845-3424

Subject: HUB Subcontracting Plan
Project Number: 02-3098
Sports Performance Center
Texas A&M University
College Station, Texas

Dear Mr. Barwick: |

I am pleased to forward this HUB Subcontracting Plan as an integral part of our written response submitted in connection with your Professional Services solicitation for Project Number 02-3098.

I have read and understand The Texas A&M University System's Policy on Utilization of Historically Underutilized Businesses (HUBs) and the goals for HUB participation.

Sincerely,

(Signature)
(Printed Name)
(Printed Title)

Attachment B.1

Preparing a HUB Subcontracting Plan (HSP)

<http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

The website shown above contains a HUB Program Link. Once you are in the HUB Program area, you will find HUB Subcontracting Plan forms.

These State of Texas HUB forms have been setup for interactive on-screen preparation or downloaded and printed in blank format for completion by typewriter or ink pen.

Attachment B.2

Preparing a Prime Contractor Progress Assessment Report for a HUB Subcontracting Plan (HSP)

<http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

The website shown above contains a HUB Program Link. Once you are in the HUB Program area, you will find HUB Subcontracting Plan forms.

These State of Texas HUB forms have been setup for interactive on-screen preparation or downloaded and printed in blank format for completion by typewriter or ink pen.

Attachment C

Consultant/Subcontractor Substitution Form

1. Consultant/Subcontracting Category: _____
Original Consultant/Subcontractor: _____
Replacement Consultant/Subcontractor: _____
2. Reasons for requesting a change in consultant/subcontractor? (Explain in detail)
THIS CHANGE IN CONSULTANTS/SUBCONTRACTORS SHALL NOT CAUSE A REDUCTION IN THE PRIMES' HUB PARTICIPATION PERCENTAGE. (IF PARTICIPATION WILL DECREASE, SPECIFIC AUTHORIZATIONS MUST BE RECEIVED FROM THE CHIEF FACILITIES PLANNING AND CONSTRUCTION OFFICER PRIOR TO INITIATING THIS SUBSTITUTION REQUEST.)

3. Follow the requirements for satisfying The A&M System good faith effort as described in the HUB Subcontracting Plan (HSP) Procedures (Article II, Para. 4 and 6 on pages 3 & 4 for construction contracts); (Article II, Para. 4 and 6, pages 3 & 4 for professional services contracts).
4. Complete and attach the Professional Services/Construction Contracts HSP identifying the **five (5) or more HUBs** solicited for this work.
5. List and provide documentation of the advertisements in trade association, minority/women focused media and/or general circulation newspapers concerning this subcontracting opportunity.

6. Construction and Furnishings Contracts: A Change Order Request (COR) that creates a new category of work that will be performed by a subcontractor not previously listed on the HUB Subcontracting Plan (HSP) requires that the HSP be revised and the Contractor must show evidence of The A&M System good-faith-effort in the solicitation of HUB Subcontractors.

The above information is being submitted in conformance with the HUB plan and I certify that it is true and correct.

Firm Name

Approval Recommendations:

Authorized Representative's Signature Date

HUB Coordinator

Print Name

FP&C Planning/Construction Project Manager

Title

Approved:

Attachment: Professional Services/Construction HSP

Facilities Planning & Construction