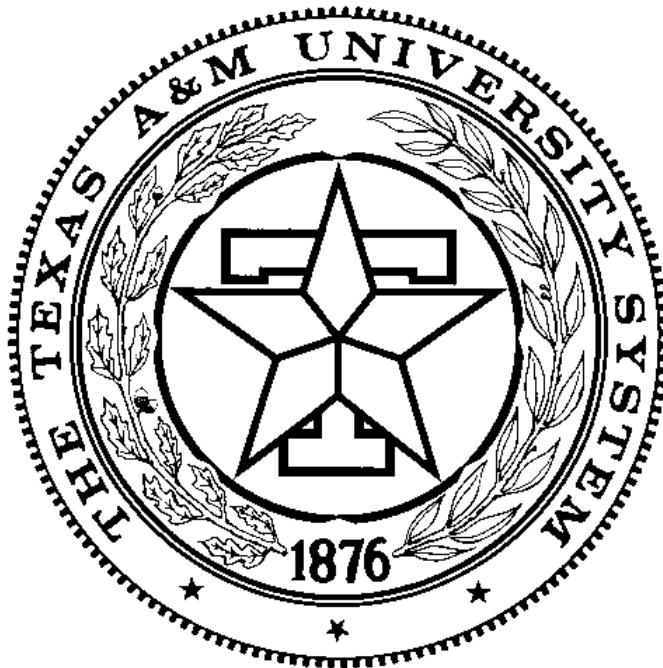


**REQUEST FOR QUALIFICATIONS
FOR
ARCHITECT/ENGINEER PROFESSIONAL SERVICES**

UTILITY AND INFRASTRUCTURE IMPROVEMENTS

TARLETON STATE UNIVERSITY
STEPHENVILLE, TEXAS
PROJECT NO. 04-3187



DEADLINE FOR SUBMITTAL:
2:00 PM, Tuesday April 13, 2015

OFFICE OF FACILITIES PLANNING & CONSTRUCTION
THE TEXAS A&M UNIVERSITY SYSTEM
COLLEGE STATION, TEXAS

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SECTION 1

NOTICE TO RESPONDENTS

General Information

The Texas A&M University System Office of Facilities Planning & Construction (FP&C) on behalf of the Board of Regents of The Texas A&M University System (Owner) and **Tarleton State University (TSU)** are soliciting statements of qualifications for selection of an Architect/Engineer (A/E) firm for the **Utility and Infrastructure Improvements Project 04-3187** (Project), in accordance with the terms, conditions, and requirements set forth in this Request for Qualifications (RFQ).

This RFQ is the first step in the process for selecting an A/E firm. The RFQ provides the information necessary to prepare and submit Qualifications for consideration by the Owner. The Owner may select the top three (3) or more of the top ranked qualified respondents to present their qualifications during an interview.

1.1 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 executed. The Owner strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of RFQ information.

Information in any tangible form which is submitted by Respondents will be treated as confidential **until such time as a contract is executed**. After that time, the information may be disclosed to requestors under the Texas Public Information Act, Chapter 552, Texas Government Code. If a respondent believes all or a portion of the information submitted is proprietary and confidential and should therefore be exempt from disclosure, they must clearly designate the specific item(s) and the proper statutory citation must be provided in each instance.

1.2 Type of Contract

Any contract resulting from this solicitation will be in the form of the Owner's Standard A/E Agreement for use on projects utilizing the Competitive Sealed Proposal delivery process.

1.3 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. 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:

FP&C will accept proposals at the location listed below until **2:00 PM, Tuesday, April 13, 2015.**

Submit **8** 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 **FPC Project 04-3187** 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. Russ Wallace, Executive Director
Office of Facilities Planning & Construction
The Texas A&M University System
301 Tarrow Street, 2nd Floor
College Station, Texas 77840-7896

1.5.2 Late received Qualifications will be returned to the respondent unopened.

1.5.3 The Owner will not acknowledge or receive Qualifications that are delivered by telephone, facsimile (fax), or electronic mail (e-mail).

1.5.4 Properly submitted Qualifications will not be returned to respondents.

1.5.5 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 Contacts

Any questions regarding this RFQ shall be directed to:

Brett McCully, PE, Project Manager IV
The Texas A&M University System

Office of Facilities Planning & Construction
301 Tarrow Street, 2nd Floor
College Station, Texas 77840-7896
Phone: **979-458-7075**
Fax: **979-458-4020**
e-mail: **bmccully@tamus.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, evaluated, and ranked 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 **Russ Wallace, Executive Director** at the address and by the submittal deadline given in Section 1.5.1. 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. Jeff Zimmermann, Director of Procurement & Business Services, jzimmermann@tamus.edu, (979) 458-6410.

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. Under this section, a business is includes a sole proprietorship, firm, partnership, corporation or joint stock association.

SECTION 2

EXECUTIVE SUMMARY

2.1 Project Description, Scope and Budget

The Project consists of location and identification of existing underground, surface and overhead utilities and infrastructure, development of a comprehensive design to replace aging underground facilities, provide new storm drain, sanitary sewer, area lighting, underground electric and telecommunication facilities, and design of surface improvements and amenities for pedestrian mall usage within two defined corridors on the TSU campus totaling approximately 3200 feet in length.

The design and construction of the pedestrian mall amenities will be consistent with the recently approved Tarleton State University 2014 Campus Development Plan, as well as meeting necessary accessibility, life safety and connectivity requirements.

The Project Design Team will need to coordinate closely with existing utility providers that are expected to participate in the design of the project, but some of which may proceed with physical improvements independently of the construction packages developed as part of this work.

The project will be required to protect several historically significant features within the project limits, including masonry/stone walls, monument markers, and mature trees.

The construction documents will be required to be packaged such that disruptions are minimized to normal campus operations as well as additional construction projects which will be ongoing throughout the project life. The Competitive Sealed Proposal (CSP) delivery process will be used for this project.

The Total Planning Amount for this project is \$ **20,000,000.00**. The Planning Amount includes an Amount Available for Construction Contract (AACC) of **\$16,981,600.00**. Fees, furnishings, other work, miscellaneous expenses, and contingencies make up the balance of the Total Planning Amount.

2.2 Program of Requirements

The Owner has approved a Program of Requirements (POR) for the project dated December 23, 2014 which is attached for reference.

It is important to note that the intended project scope described in the POR has been reduced by approximately 20% to reach the funding limits listed in section 2.1 above. Specifically, POR Scope Segment 4 (Southeast Campus Electrical) and Segment 5 (Southwest Campus Electrical and Streets) are not to be included in the work being contemplated at this point in time.

2.3 Project Planning Schedule

Key Project planning schedule milestones are:

- | | |
|---|-----------------------------|
| ▪ Owner receives Request For Qualifications | Refer to Section 1.5 |
| ▪ Owner announces Respondents qualified for further consideration | April 2015 |
| ▪ Owner interviews Respondents | April 2015 |
| ▪ Owner executes Agreement | June 2015 |
| ▪ Owner approves Schematic Design Documents | August 2015 |
| ▪ Owner approves Design Development Documents | October 2015 |
| ▪ Owner approves Construction Documents | December 2015 |
| ▪ Owner advertises for Competitive Sealed Proposals | December 2015 |
| ▪ Owner issues Notice to Proceed for Construction | April 2016 |
| ▪ Owner accepts Substantial Completion of Construction | June 2017 |

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 for any proposed sub-consultants necessary to provide the required Project Management, Land/Boundary Surveying, Civil Engineering, Electrical Engineering, Landscape Architecture, Geotechnical Engineering, Structural Engineering, Scheduling, Cost Estimating and Construction Administration 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
- 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/Engineer (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.

3.4 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
- 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 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.
 - 3.5.6 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.
 - 3.5.7 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.
 - 3.5.8 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.
 - 3.5.9 Describe the project team's approach to assuring timely completion of this project, including methods you will use for schedule recovery if necessary.
 - 3.5.10 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.

3.7 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 The Texas A&M University 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 2155.006, 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 1.11), 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.

AGREEMENT

BETWEEN

THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY

SYSTEM

AND

 [NAME BOLD] ,

ARCHITECT/ENGINEER

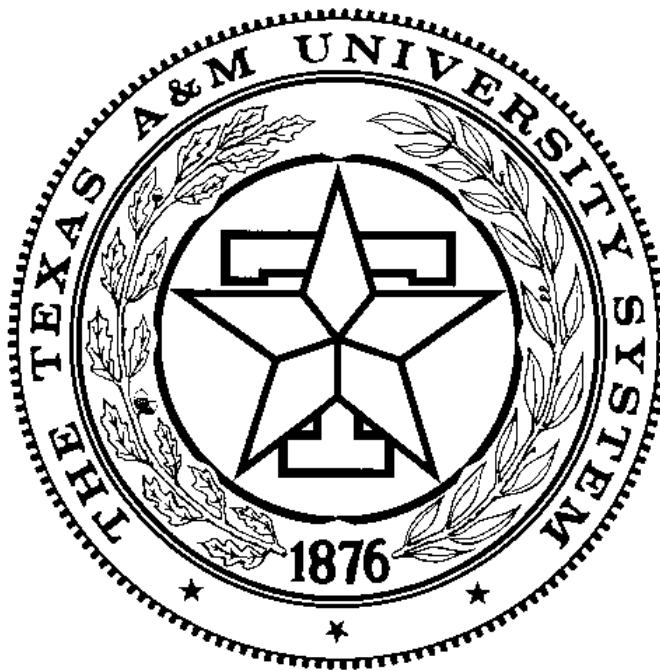


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**AGREEMENT
BETWEEN
THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY
SYSTEM
AND
[NAME BOLD],
ARCHITECT/ENGINEER**

This Agreement is effective as of [Date the Executive Vice Chancellor and Chief Financial Officer signs the Agreement], 20__ (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: Utility and Infrastructure Improvements (the “Project”).

Owner intends to construct the Project at Tarleton State University in Stephenville, Texas, for which, under a total cost allocation, Sixteen Million, Nine Hundred Eighty-One Thousand, Six Hundred and no/100 dollars (\$ 16,981,600.00) 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 15 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 15.2 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 (SECO), 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 SECO requirements using RETScreen International Clean Energy Project Analysis software. Analysis shall include solar energy, biomass energy, geothermal energy and wind energy.

1.1.15 Basic design services shall include analysis and incorporation of on-site water reclamation technologies, pursuant to Section 447.004 *Texas Government Code*.

1.1.16 The Architect/Engineer, as a part of Basic Services, shall employ sustainable design principles based on LEED 2009 as established by the U.S. Green Building Council. Specifically employ those principles pertaining to energy and water conservation and indoor environmental quality. Any energy modeling and/or daylighting studies, required to achieve these principles shall be included as part of Basic Services. 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 an Additional 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. 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
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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 Tarleton State University 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 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.

1.1.34 The Architect/Engineer shall produce drawings for this Project in three dimensions utilizing an object orientated software system as part of Basic Services.

1.1.35 The Architect/Engineer shall utilize an Owner's project management software package e-Builder, for all project documentation and processes through all phases of the Project.

1.1.36 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 digital copies and the number of complete printed copies of all Plans, Drawings and Specifications as enumerated in Article 15, which copies shall become the property of the Owner. The Architect/Engineer shall incorporate into the Plans, Drawings 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 to design and construction of the Project to satisfy Owner's requirements and shall, at completion of this phase, submit Schematic Design Documents in accordance with "Facility Design Guidelines" and any additional requirements set forth in Article 15. The Architect/Engineer shall review alternative approaches to design in 3D and construction for the Project and the Schematic Design Documents as they are being prepared at intervals appropriate to the progress of the Project with the Owner at the Project site or other location specified by the Owner within the State of Texas.

1.2.2 Architect/Engineer shall provide all services necessary to perform the services of this phase (preparation of Schematic Design Documents) including, without limitation, unless otherwise approved by Owner, the preparation and prompt delivery of all items specified in "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 number of complete printed sets of Schematic Design documents as enumerated in Article 15.

1.2.5 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 advise the Owner of any adjustments to the project scope necessary to align the cost estimate and the project budget with the established Amount Available for Construction Contract and revise the Schematic Design Documents as may be required.

1.2.6 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.

1.2.7 The Architect/Engineer shall participate in a final review of the Schematic Design Documents with the Owner 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 and any adjustments to the Program of Requirements or Amount Available for the Construction Contract authorized by the Owner, the Architect/Engineer shall prepare, for approval by the Owner, Design Development Documents in accordance with Owner's written requirements to further define and finalize the size and character of the Project in accordance with "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 prepared at intervals appropriate to the progress of the Project with the Owner at the Project site or other location specified by Owner in the State of Texas.

1.3.2 The Architect/Engineer shall furnish and deliver to the Owner the number of complete printed sets of Design Development documents as enumerated in Article 15.

1.3.3 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 advise the Owner of any adjustments to the project scope necessary to align the cost estimate and the project budget with the established Amount Available for Construction Contract and revise the Design Development Documents as may be required.

1.3.4 Before proceeding into the Construction Document Phase, the Architect/Engineer shall do coordination, aggregation and "clash detection" to remove conflicts in design between disciplines and obtain Owner's written acceptance of the Design Development documents and approval of the mutually established Amount Available for the Construction Contract and schedule.

1.3.5 The Architect/Engineer shall prepare presentation materials 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. Presentation materials shall include an animation of the design.

1.3.6 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.

1.3.7 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.

1.4 Construction Document Phase

1.4.1 Based on the approved Design Development Documents 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, Construction Documents consisting of Drawings, Schedules and Specifications in accordance with Owner's written requirements setting forth in detail the requirements for construction of the Project, including, without limitation, "Facility Design Guidelines". The Plans, Drawings and Specifications for the entire Project shall be prepared so that the construction of the building and related facilities, together with its built-in permanent fixtures and equipment which will cost not more than the Amount Available for the Construction Contract established by Owner. The Architect/Engineer will be responsible for managing the design to stay within the 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 at the Project site or other location specified by Owner in the State of Texas.

1.4.2 The Architect/Engineer shall advise the Owner 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.

1.4.3 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.

1.4.4 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.

1.4.5 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 advise the Owner of any adjustments to the project scope necessary to align the cost estimate and the project budget with the established Amount Available for Construction Contract and revise the Construction Documents as may be required.

1.4.6 The Architect/Engineer shall participate in a final review of the Construction Documents with the Owner 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.

1.4.7 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 The Architect/Engineer shall assist the Owner in obtaining and evaluating bids or proposals, and assist in awarding contracts for construction, including preparation for and

attendance at Pre-proposal Conferences and HUB meetings. 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. The Architect/Engineer shall maintain a register of bid and proposal documents, distribute documents to bidders, proposers, and plan rooms, and obtain and administer deposits.

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

1.5.3 In the event the best value proposal received for the Project exceeds the Final Amount Available for Construction Contract established at the completion of the Construction Document Phase, the Architect/Engineer, without charge to the Owner, and if so directed by Owner, shall revise the drawings and specifications as necessary to bring the cost of the Project within the Final Amount Available for Construction Contract. The Owner reserves the right to accept a proposal and award a construction contract that exceeds the Final Amount Available for 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 award of the Contract for Construction 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 "Facility Design Guidelines" current as of the date of this Agreement.

1.6.3 The Architect/Engineer shall provide updated documents at each Contractor's monthly meeting and when requested.

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, 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 3D 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 digital files. 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 maintained by the Contractor during the course of the Work in association with certifying progress payments and shall review record documents for completeness and compliance with Contract requirements 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 Contract between Owner and Contractor, shall forward to Owner. The Architect/Engineer shall certify final payment to the Contractor when the requirements of the Contract between Owner and Contractor have been met.

1.6.22 Architect/Engineer shall revise the Drawings and Specifications upon Final Completion of the construction, to incorporate all Addenda, all Change Orders for the Work and any modifications recorded by the Contractor on the 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 ArchiCAD “PLN” and “IFC” digital format and “PDF” format. Facility space listing, schedules, equipment and product data shall be in excel format derived from 3D digital files.

- 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 Owner in the 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 Executive Director for the Office of Facilities Planning & 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 Executive Director for the Office of Facilities Planning & 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 15. Comments concerning corrections or amendments to the 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.

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 15.1 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 14.13 (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 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. A copy of this form can be downloaded from the following site: <http://www2.tamus.edu/offices/fpc/forms/>.

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 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 reproducible copies, of 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 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 Drawings or Specifications (including Drawings or Specifications provided in 3D CADD or other electronic format) 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 **Billy C. Hamilton, Executive Vice Chancellor and Chief Financial Officer**, for the Office of 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:

Billy C. Hamilton, Executive Vice Chancellor and Chief Financial Officer
Facilities Planning & Construction
The Texas A&M University System
301 Tarrow Street, 7th Floor
College Station, Texas 77840-7896

With Copies to:

Russ Wallace, Executive Director
Office of Facilities Planning & Construction
The Texas A&M University System
301 Tarrow Street, 2nd Floor
College Station, Texas 77840-7896

Pete Schmid, Area Manager
Office of Facilities Planning & Construction
The Texas A&M University System
301 Tarrow Street, 2nd Floor
College Station, Texas 77840-7896

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:

- a. Civil Engineering Services
- b. Landscape Architectural Services
- c. Structural Engineering Services
- d. Mechanical Engineering Services
- e. Electrical Engineering Services
- f. Audio Visual/Data & Telecommunications Engineering
- g. 3D Digital Rendering(s), animations, simulations and/or Scale Model

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

- a. Site Survey
- b. Geotechnical Investigation
- c. Hazardous Material Abatement Services
- d. Registered Accessibility Specialist

15.3 Basis of Compensation

15.3.1 Basic Services.

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

Sixteen Million, Nine Hundred Eighty-One Thousand, Six Hundred Dollars
(\$16,981,600.00).

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 15.2.]

15.3.2 Reimbursable Services.

Site Survey:	Not to Exceed \$ _____
Geotechnical Investigation:	Not to Exceed \$ _____
Hazardous Material Abatement Services	Not to Exceed \$ _____
Registered Accessibility Specialist	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: \$ _____

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:

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:

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:

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 _____
Executive Vice Chancellor and Chief Financial
Officer

By _____
(Signature)

(Print or Type Name)

Date _____

Date _____

APPROVAL RECOMMENDED:

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.

Executive Director
Office of Facilities Planning & Construction

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:

Name: _____

General Counsel

Name: _____

Name: _____

Date _____

Name: _____

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

EXHIBITS

Ex A Personnel Titles and Hourly Rates

Ex B Statement For Architectural/Engineering Services

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 FP&C Area Manager:

Signature

Date

REVISIONS

[illegible]



Tarleton State University
Stephenville, Texas

Program of Requirements (POR) for:

Utility and Infrastructure Improvements

Project Number 04-3187

Program of Requirements

Section I: General Information

Project Name: *Utility and Infrastructure Improvements Project*
Project Number: *TAMUS Project No. 04 – 3187*
Member Institution: *Tarleton State University*
City: *Stephenville, Texas*
Date Prepared: *December 22, 2014*
Prepared By: *Broaddus Planning, LLC*
Proposed Delivery Method: *CSP*
Type of Project: *Renovation - Infrastructure*
Proposed Building Space Class: *Institutional*
Planned Gross Area: *N/A*
Number of Floors Above Grade: *N/A*
Number of Floors Below Grade: *N/A*

Section II: Project Team Members

2.1 User Group:

Name: Aaron J. Wand
Physical Plant/Facility Services: Director of Facilities Services / User Coordinator
Office Phone: (254) 968-9065
Email: wand@tarleton.edu

2.2 System Member Administration:

Name: Dr. F. Dominic Dottavio
Title: President
Office Phone: (254) 968-9100
Email: dottavio@tarleton.edu

Name: Tye V. Minckler
Title: Vice President for Finance and Administration
Office Phone: (254) 968-9877
Email: minckler@tarleton.edu

Name: Mark Garner
Title: Manager of Utilities & Energy Services
Office Phone: (254) 968-9263
Email: garner@tarleton.edu

Kenneth ✱
Name: Gene Morrison
Title: Campus Inspector
Office Phone: (254) 592-4747
Email: morrison@tarleton.edu

Name: R. Matthew Welch
Title: Chief of Police
Office Phone: (254) 968-9875
Email: welch@tarleton.edu

Name: Chad Evans
Title: Lead IT Project Manager
Office Phone: (254) 968-9822

Email: cevans@tarleton.edu

Name: Jamie Trusner
Title: Networks & Communications Manager
Office Phone: (254) 968-9900
Email: trusner@tarleton.edu

Name: Kent Styron
Title: Director of Risk Management and Compliance
Office Phone: (254) 968-9898
Email: wkstyron@tarleton.edu

2.3 The Texas A&M University System:

Name: Dan Kennedy
Facilities Planning & Construction Assistant Director
Office Phone: (979) 458-7003
Email: dan-kennedy@tamus.edu

Name: Bruce Karr
Facilities Planning & Construction Area Manager - Engineering
Office Phone: (979) 458-7042
Email: bkarr@tamus.edu

Name: Pete Schmid
Facilities Planning & Construction Area Manager
Office Phone: (979) 458-7051
Email: pete-schmid@tamus.edu

Name: Jeff Zimmermann
Facilities Planning & Construction HUB & Procurement
Office Phone: (979) 458-6410
Email: jzimmermann@tamus.edu

2.4 Local Partners

Name: Ben McCleery
TxDOT: Erath County Head Chief
Office Phone: 254-965-3511
Email: ben.mccleery@txdot.gov

Name: David J. Picha
Oncor Electric Delivery: Project Manager
Office Phone: (979) 458-7051
Email: david.picha@oncor.com

Name: Nick Williams, P.E.
City of Stephenville: Director of Public Works
Office Phone: 254-918-1223
Email: nwilliams@stephenvilletx.gov

Section III: Project Description

3.1 User Justification:

The Tarleton State University Roads and Infrastructure Improvement Project is intended to improve pedestrian walkways for students across the main pathways on campus while at the same time installing proper storm drainage for these pathways that has never existed. Vanderbilt Street, which is now the main east-west pedestrian pathway, turns into a river currently when it rains, which is both obstructive and dangerous and is not the image desired for a Texas A&M University System campus. In addition, electrical infrastructure needs replacing and upgrading to accommodate a growing campus, bicycle paths will be added to minimize the cars on campus, power lines will be set underground to avoid electrical outages from lightning that occur and shut down campus. Together these infrastructure improvements will create the campus environment befitting one of the fastest growing universities in the state of Texas.

Tarleton State University has been in the process of making pedestrian improvements to the campus, having already installed several pedestrian only walkways with recent housing and landscape improvement projects, while closing other stretches of roadway to vehicles without physical improvements. This effort has met with considerable success and dramatically improved the character and walkability of campus, though some of these areas are in relatively poor condition and are in need of safety, accessibility and aesthetic improvement.

The most recent, and nearly complete, Campus Development Plan identifies the implementation of these pedestrian improvements as a key design principle for the campus. The closure of these areas to vehicles and enhancement of pedestrian, bicycle, and landscape design in these areas is crucial to improving campus image and allowing for safe, multi-modal transit opportunities for students, employees, and visitors. These pedestrian zones will stitch together anticipated construction projects and create a more cohesive and attractive campus. See Exhibit A for illustrative campus plans – existing and near term proposed. See Exhibits C, D, and E for conceptual renderings of pedestrian improvements outlined in the narrative that follows.

3.2 Project Narrative:

The project will support the enhancement of pedestrian and bicycle connectivity as envisioned in the Campus Development Plan, and provide infrastructure upgrades to support upcoming housing, academic, and residential projects in progress and anticipated for the campus.

The upgrades will include the enhancement of dedicated pedestrian and bicycle malls on several segments of interior campus streets; improvements in drainage and storm water infrastructure along these corridors; the upgrade, relocation and/or burial of electrical utilities along these and several additional streets; and provision future utilities conduits as outlined below.

- 1. Rehabilitate Lillian Street from Washington to Jones:** Convert street to pedestrian mall area along this length, provide underground storm sewer and relocate overhead electrical lines (Oncor & Tarleton owned) underground.
- 2. Rehabilitate Vanderbilt Street from Rome to Cain Street:** Convert street to pedestrian mall area along this length and provide underground storm sewer.
- 3. Northeast Campus Overhead Lines:** Remove Tarleton Electrical lines from Oncor poles, relocate Oncor electrical lines underground and remove existing poles along Vanderbilt from Cain Street to McIlhane Street.
- 4. Southeast Campus Electrical:** Relocate Oncor Poles to south side of Washington Street in from Lillian Street to McIlhane Street in preparation for redesigned intersection at Washington and Lillian Streets.

5. **Southwest Campus Electric & Streets:** Pedestrian improvements from the College of Business to Lillian Street, necessary for project completion and planned Applied Sciences Building. Install new underground primary electrical connecting at Lillian Street and terminating at Business/Hydrology Building completing the West Campus Redundant Loop.
6. **Other and miscellaneous:** Replace old pad mount transformers, campus metering, primary switching, Grant Building primary, Central Receiving Northwest location primary switch, new pad mount reclosure at Vanderbilt Street, Lillian Street, and Cain Street. Additional Street work necessary for project completion and uniformity of design and maintenance of campus roadways.

The Project Architect/Engineer (Project A/E) team is responsible for the design as requested for this project.

The Program of Requirements (POR) is intended only to establish basic design criteria. This POR does not include all User requirements that may be identified in the project during the design process. Further, it is to be used in conjunction with the Office of Facilities Planning & Construction's (FP&C) "Facility Design Guidelines" manual and the Agreement for A/E Services to establish the responsibilities of the Project A/E team. The Facility Design Guidelines provide general criteria, design processes, and general requirements applicable to Texas A&M University System construction projects. The design team shall make professional evaluations of design problems and issues related to this project, analyze the advantages and disadvantages of each, evaluate, and recommend solutions to the design issues during the design process.

It is emphasized that the Project A/E team is responsible to the Executive Director of the Office of Facilities Planning & Construction for performing professional evaluations and any needed detailed studies using sound architectural and engineering principles required to establish the most functional, economical, and efficient use of materials, the site, and construction methods in order to provide the requested facilities within an approved budget during the design phases. The project will use the Competitive Sealed Proposal (CSP) delivery method.

The Project A/E team is charged with the responsibility of establishing the final locations, configuration, and layout taking into consideration site conditions and requirements established in this program.

Working closely with ONCOR, the project will redesign affected facilities and reconstruct them to their specifications in identified areas. Additionally, Tarleton State FP&C will work closely with TxDOT on the redesign of their intersection and right of way at Washington and Lillian, and keep the city involved in this process.

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

Project Budget and Schedule

4.1 Summary Project Budget:

The following budget represents a total project budget for all projects included in the above project narrative. Scope priorities and phasing will need to be identified by the Campus and FPC once design is initiated. Updated cost estimates will need to be prepared based on optimal project phasing.

ID	Budget Category	Amount
A	Construction	\$ 20,904,524
B	A/E Design & Other Fees, Misc. Support	\$ 2,905,000
C	Owner Contingency (5%)	\$ 1,190,476
F	Total All Projects	\$ 25,000,000

4.2 CSP Schedule:

The following is a simplified schedule encompassing all projects. Actual schedule will be determined based on critical path phasing, priority projects, and the need to maintain operational circulation on campus. Additionally, it is anticipated that key priority projects will be complete in advance of the planned 2017 spring semester centennial celebration of Tarleton State becoming part of the Texas A&M University System, as coordinated with campus representatives.

ID	Schedule Milestone	DATE
Utilities and Infrastructure Improvements		
<i>All Projects</i>		
1	<i>Initiate Design</i>	6/1/2015
2	<i>Construction Bid</i>	12/1/2015
3	<i>Construction Start</i>	4/1/2016
4	<i>Construction Complete</i>	6/1/2017

Section IV: Proposed Project Lifecycle

- 5.1 Building Structure:**
Slab on Grade Foundation: *Institutional*
- 5.2 Exterior Components:** *N/A*
- 5.3 Interior Components (Non Mechanical, Electrical, or Plumbing):** *N/A*
- 5.4 Plumbing System:**
Plumbing Rough-In: *Institutional*
- 5.5 Mechanical System:** *N/A*
- 5.6 Fire:** *N/A*
- 5.7 Electrical:**
Lighting: *Institutional*
- 5.8 Telecommunications:**
Communications: *Institutional*

Section V: Programming

- 6.1 What are key aspects of the project that will be used to determine the success of the project?**
- *Project facilities support safe and efficient circulation for the campus community, providing connectivity between existing and planned academic, housing, student life, and athletics facilities.*
 - *Project alleviates storm water and drainage concerns along proposed corridors.*
 - *Work must be closely coordinated with all utilities and entities, including Oncor, AT&T, City of Stephenville, and Tarleton State University building projects in the area occurring during the same time frame.*
- 6.2 What are the main barriers to the success of the project?**
- *Ability to coordinate planned improvements and phasing of projects and establish responsibility with all involved utilities and entities, including Oncor, AT&T, City of Stephenville, and securing timely responses and commitments from all involved.*
 - *Coordination and timing of projects in relationship to other planned campus Academic, Housing, Student Life and Athletics building projects.*
- 6.3 Anticipated project phasing and factors affecting project phasing.**
- *Southeast Campus Electrical (Project 5) is dependent on timing of improvements along Washington Street, will have to be coordinated with City of Stephenville and TxDOT as the curve in Washington at Lillian is redesigned and the right of way is improved.*
 - *Work is planned such that it minimizes duration of disruption of campus circulation during the academic year; where possible work should be staggered to structure the most disruptive portions of the work during the summer, or to avoid having a burdensome number of streets and walkways closed at any one time.*
 - *The schedule of improvements to Vanderbilt Street should be integrated and coordinated with the planned residence halls and plaza at the east grandstand of Memorial Stadium.*

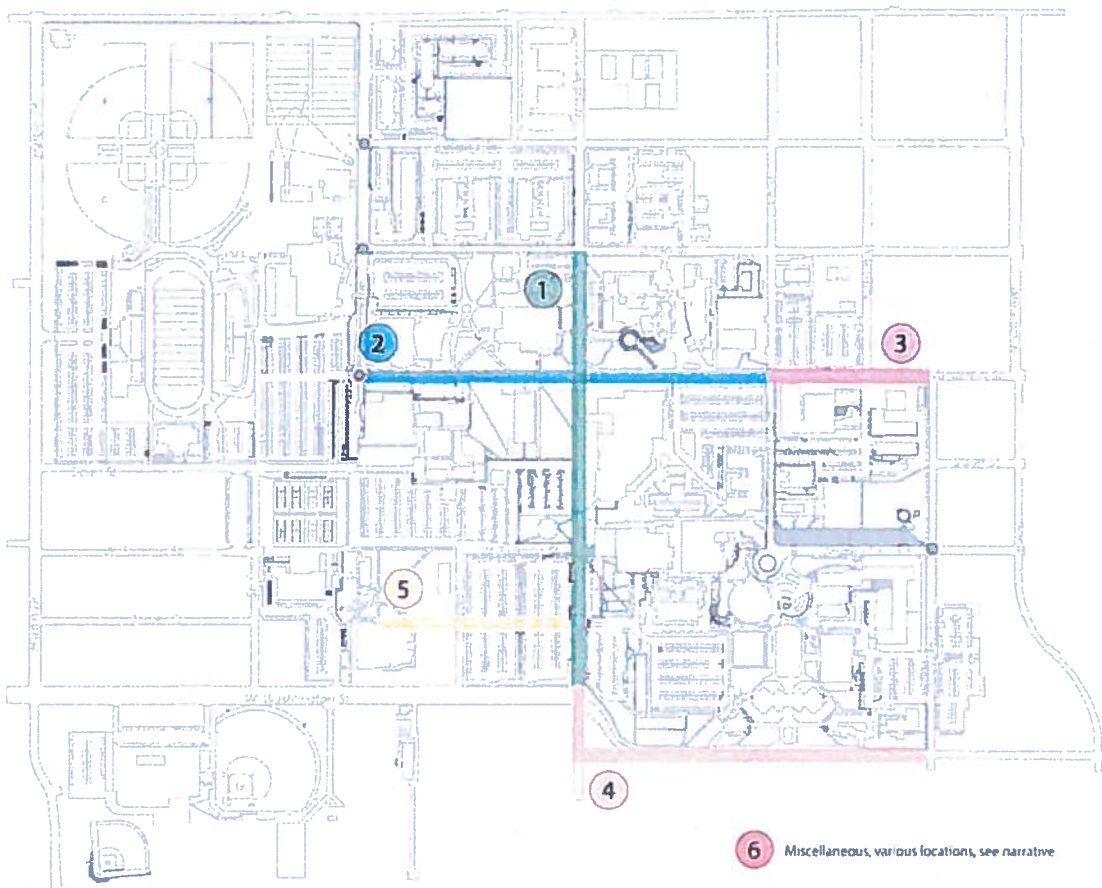
- *The A/E team and follow on contractor should be required to develop a sequencing schedule for the work with input from and for approval by the campus.*

6.4 Break Down of Occupancy: N/A

6.5 Operational Hours:

Weekly Operational Hours: 24/7
Yearly Operational Weeks: 52

6.6 Site Map:



6.7 Site:

Wind Zone: N/A

Parking Requirements: N/A

Landscape: *Using the Tarleton State University Master Plan and Campus Development Plan as guides, the project will install landscaping in and along the identified pedestrian zones. The landscaping of these areas should pay particular attention to the planting guide found in Appendix A of the 2014 Tarleton State University Campus Development Plan for guidance on species of grasses, shrubs, and trees appropriate to the campus sub-area and eco-region. It is expected that isolated areas of the pedestrian zones may be more intensively landscaped, but that much of the project will have less extensive landscape treatment; at a minimum all areas should be landscaped in a way to establish a rhythm and sense of character to the project areas, such as through the tasteful planting of trees at regular intervals, without creating an overwhelming burden on maintenance.*

Exterior Design: N/A

Security: *Appropriate security measures shall be taken to ensure the pedestrian zones meet with existing campus security policy in coordination with Tarleton State University Police. All walkways should have appropriate levels of lighting, visibility, and have all appropriate security equipment such as security cameras and emergency phones meeting or exceeding existing campus standards.*

6.8 Describe the availability and location of utilities.

Tarleton State University has been in communication with ONCOR regarding the relocation of the electrical facilities identified in this POR and has been provided with estimates for performing these relocations.

The Facilities Services Department (SSC) has determined that there is adequate utility production and wastewater treatment capacity available and utility infrastructure in the vicinity of the project site to provide the following university utility services: Electricity, Domestic Water, Thermals (chilled water and heating hot water) for cooling and heating, sanitary sewer, and storm drain collection.

The project will be responsible to connect to the university utility infrastructure in close coordination to gain approval from the FPC Project Manager and Tarleton Facilities Services/SSC. Project contractor will be required to meet all university design guidelines for the electrical system and water systems to serve the facility and site, including required commodity metering for electricity, domestic water, and thermals (CHW and HHW). Project will also connect to ONCOR, City and TxDOT facilities and will be required to meet their guidelines.

Other services such as telecommunications, fiber network, etc. must be provided by the project in close coordination with the FPC Project Manager and appropriate Tarleton State University department to meet campus standards.

6.9 Codes, Requirements, and Regulations

The project is to be designed and constructed to comply with the Campus Master Plan and Campus Development Plan, FM Global standards and the current edition of the TAMUS Facility Design Guidelines, as well as contract provisions proscribed by the System Standard A/E Agreement. Except where FM standards are more stringent, the following Codes and Standards are to be followed and latest editions of each used:

- *Life Safety Code 101 as adopted by the State Fire Marshall, including all referenced standards*
- *International Building Code (BC)*
- *FM Global standards for roof systems*
- *FM Global standards for fire protection systems*
- *International Mechanical Code (MC)*
- *International Plumbing Code (PC)*
- *National Electric Code (NEC)*
- *National Fire Protection (NFPA) Standards*
- *State Energy Conservation Design Standard (ASHRAE 90.1-2010)*

- *ASHRAE 62.1 Indoor Air Quality Standard*
- *Building Service Piping (ASME/ANSI B31.9)*
- *Texas Accessibility Standards (TAS)*
- *Americans with Disabilities act (ADA)*
- *Safety Code for Elevators and Escalators (ASME A17.1 & A17.3)*
- *T1A/EIA Standards TIA/EIA*

6.10 Special Requirements

- *The design team shall perform all site survey work required for the layout and design of the program components of this project. Survey control shall be established on site sufficient to establish horizontal and vertical control for use by the contractor(s) during construction.*
- *The design of roadways, walkways, site work, bridges and utility trenches shall be based on the recommendations of a geotechnical engineer who is a part of the design team*
- *All design shall consider and coordinate with the design of adjacent projects also in various stages of design and development, and should involve Oncor Electric, AT&T, City of Stephenville and University project team representatives listed in Project Team Section II.*
- *Site access, parking, and lay-down areas will have to be closely coordinated with adjacent construction projects anticipated in the area during this time frame.*
- *Other reports/studies/exhibits for consideration:*
 - *Tarleton State University Infrastructure Expansion and Enhancement presentation given to Board of Regents*
 - *Oncor Memo detailing electrical utility relocation estimates*
 - *Priority Project Cost Estimates, Joe D. Standridge, Jr., PE, MBA, CFP, Prepared September 26, 2012*
 - *Exhibits A-G: reflect conceptual design and configuration options of pedestrian zones included in this POR.*

6.11 Program

Program items are enumerated below. All lengths are approximate and will require field verification. Refer to Exhibits A and B.

1. Rehabilitate Lillian Street from Washington to Jones: *Convert street to pedestrian mall area along this length, provide underground storm sewer and relocate overhead electrical lines (Oncor & Tarleton owned) underground. (Refer to Exhibits C and D for Vanderbilt Street improvements (item 2 below) for similar Lillian Street pedestrian mall configuration and cross section.)*

A. From Washington to Vanderbilt 1,200 ft.

- **ONCOR 1,200 ft*
- **Storm/Sewer 1,200 ft*
- **Rehab Street to Mall 1,200 ft*
- **Tarleton Electric 550 ft.*

B. From Vanderbilt to Jones Street – 500 ft.

- *ONCOR 500 ft*
- *Storm Sewer 500 ft*
- *Rehab Street to Mall 500 ft*

2. Rehabilitate Vanderbilt Street from Memorial Stadium East Grandstand to Cain Street: Convert street to pedestrian mall area along this length and provide underground storm sewer. Refer to Exhibits C and D.

A. Rome to Lillian – 800 ft.

- Storm Sewer 800 ft
- Rehab Street to Mall 800 ft.

B. Lillian to Cain – 700 ft.

- Storm Sewer 700 ft
- Rehab Street to Mall 700 ft

3. Northeast Campus Overhead Lines: Remove Tarleton Electrical lines from Oncor poles, relocate Oncor electrical lines underground and remove existing poles along Vanderbilt from Cain Street to McIlhane Street. Refer to Exhibits C and D.

- Oncor Electric – McIlhane to Cain Street 1,300 ft.
- Storm Sewer (Vanderbilt – Cain to McIlhane) – 650 ft.
- Tarleton Underground Electrical, Route Hunewell Annex to Eng. Tech Bldg. – 1,700ft

4. Southeast Campus Electrical: Relocate Oncor Poles to south side of Washington Street in from Lillian Street to McIlhane Street in preparation for redesigned intersection at Washington and Lillian Streets.

- ONCOR Electrical, 1,500 ft

5. Southwest Campus Electric & Streets: Install new underground primary electrical connecting at Lillian Street and terminating at Business/Hydrology Building completing the West Campus Redundant Loop. Pedestrian improvements from the College of Business to Lillian Street, necessary for project completion and planned Applied Sciences Building. Refer to Exhibit E.

- Approx. 700 ft

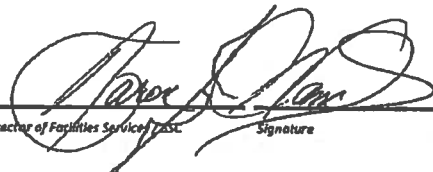
6. Other and miscellaneous: Replace old pad mount transformers, campus metering, and primary switching, Grant Building primary, Central Receiving Northwest location primary switch, new pad mount reclosure at Vanderbilt Street, Lillian Street, and Cain Street. Additional Street work necessary for project completion and uniformity of design and maintenance of campus roadways.

Program of Requirements Sign Off

The representatives of Tarleton State University are in agreement that the Program of Requirements (POR) contained here within adequately identifies, describes, and documents the needs of the project.

Approval of the POR indicates an understanding of the purpose and content described in this document.

7.1 User Group:

_____		_____
Aaron J. Ward	Director of Facilities Services / TSSC	12-23-14
	Signature	Date

7.2 System Member Administration:

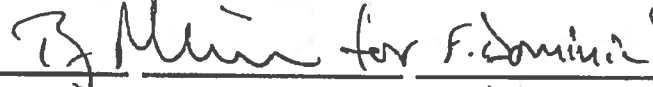

_____		_____
F. Dominic Dattavio, Ph.D.	President	12/23/14
	Signature	Date
_____		_____
Tye V. Minckler	Vice President for Finance and Administration	12/23/14
	Signature	Date

Exhibit A: Existing Conditions & Campus Development Plan: Illustrations of 1) Existing Campus Conditions and 2) the near term Campus Development Plan for the Tarleton State University, demonstrate how the proposed utility and infrastructure projects support planned development and growth of the campus.

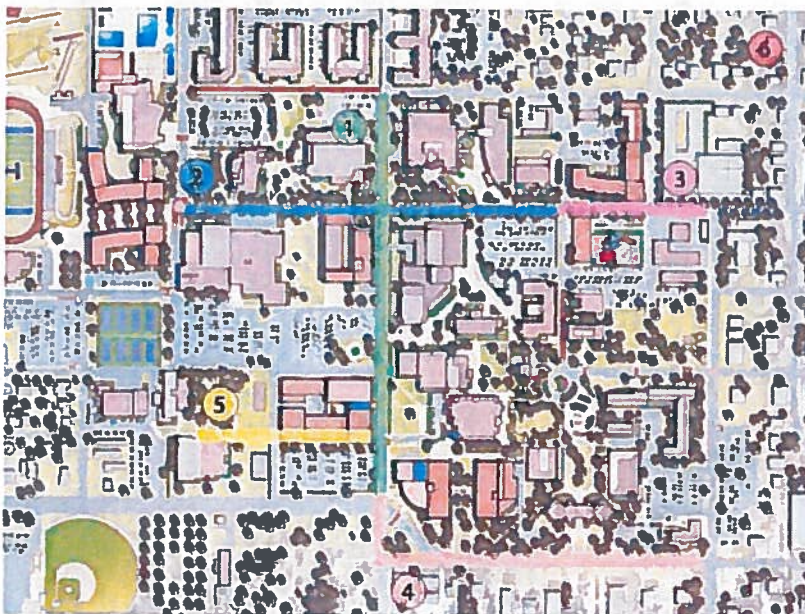
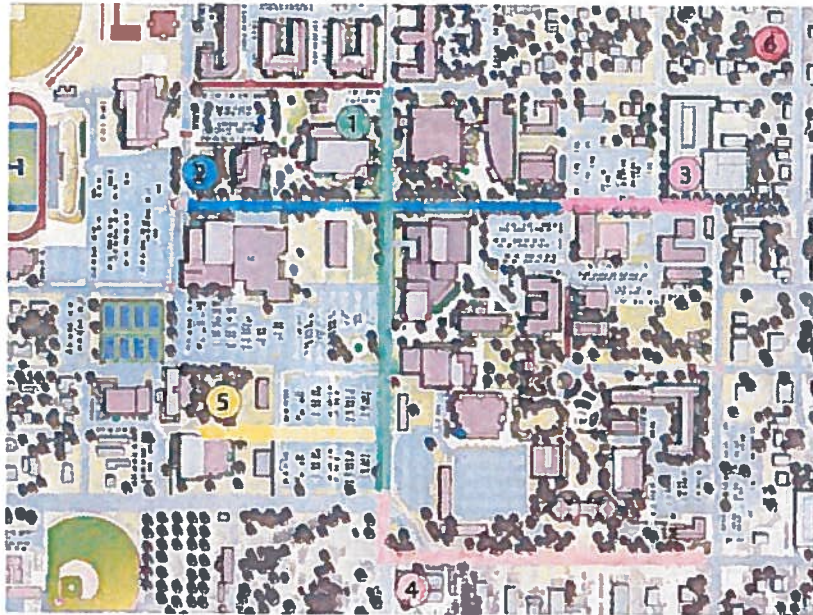


Exhibit B: Site plan: Priority projects as enumerated in Program Narrative.

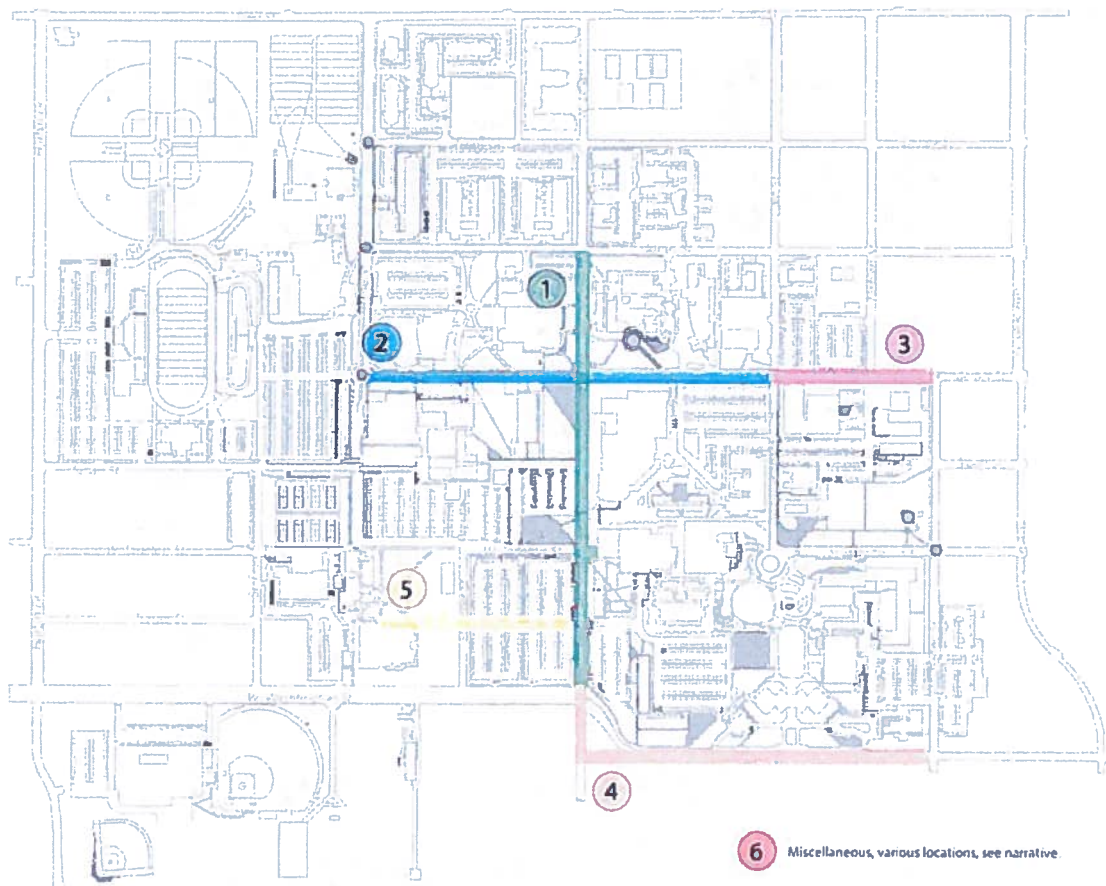


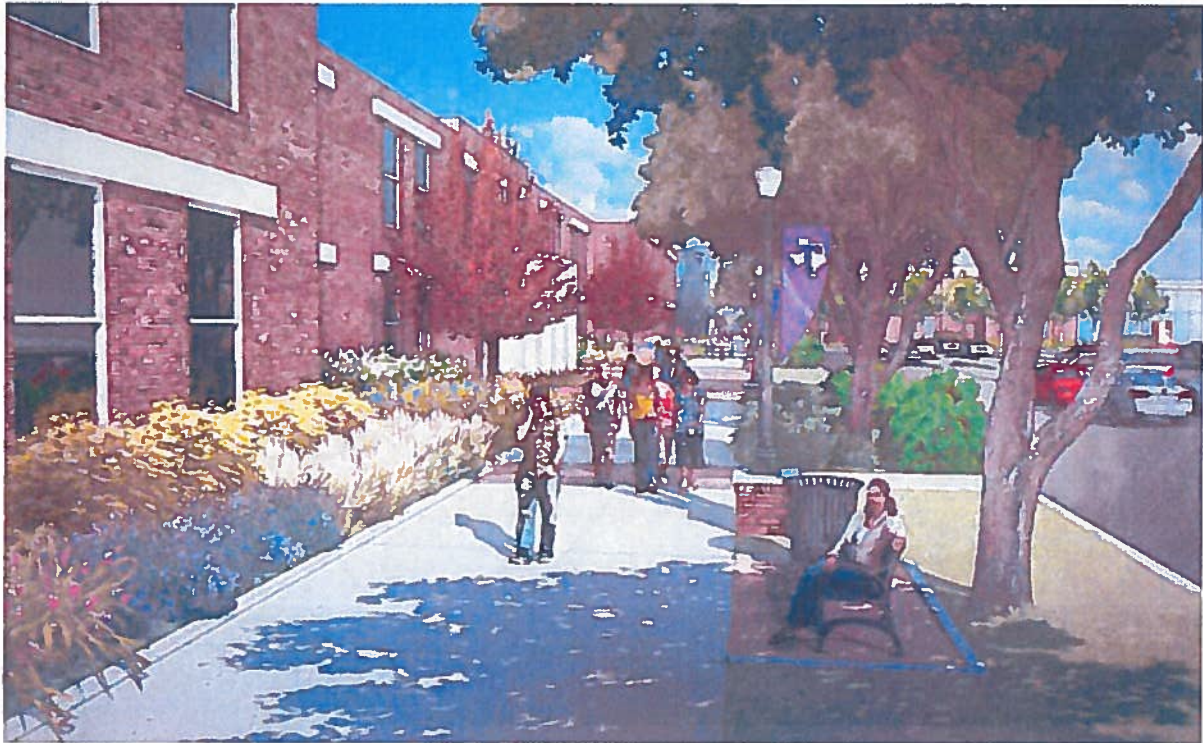
Exhibit C: Pedestrian Mall – Vanderbilt Street facing west toward Memorial Stadium and planned housing at terminus



Exhibit D: Pedestrian Mall – Typical Section



**Exhibit E: Rendering facing east of pedestrian walk between College of Business Administration connecting back to
O. A. Grant Humanities Building**



THE TEXAS A&M UNIVERSITY SYSTEM

HUB SUBCONTRACTING PLAN

for

PROFESSIONAL SERVICES

(Firm Name)

(Address)

(City/State/Zip Code)

(Telephone)

(Fax)

for

Utility and Infrastructure Improvements

Tarleton State University

Stephenville, Texas

Project No. 04-3187

I. The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting.

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

The Texas A&M University System has determined that the agency's goals are higher than the State's goals. Therefore, respondents are required to use the following:

1. 11.20% for heavy construction other than building contracts;
2. 21.1% for all building construction, including general contractors and operative builders contracts;
3. 21.55% for all special trade construction contracts;
4. 32.07% for professional services contracts;
5. 12.63% for all other services contracts; and
6. 52.78% 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 Black Americans, Hispanic Americans, Women, Asian Pacific Americans, Native Americans and Service Disabled Veterans 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 either the State of Texas Disparity Study goals or the agency's goal, whichever is the higher, 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. Jeff Zimmermann, Director, Procurement and Business Services, JZimmermann@tamus.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 System has determined that a Good Faith Effort is met in the following manner:

If you are responding to Professional Services RFQ, you are allowed to submit “Method A” or “Method B”. The State of Texas HUB Subcontracting Plan forms shall be accessed on the following website:

<http://www.tamus.edu/offices/fpc/forms/>

The State of Texas HSP forms shall 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 4 and either Method A or Method B of the HSP, identifies **ALL** subcontracting categories, and makes a good faith effort for each subcontracting category identified. (See State of Texas HSP Form).
- 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 2, Sections 2a and page 3, Sections 3 and 4).

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.

2. The System shall require a respondent to state whether it is a Texas certified HUB.
3. 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 32.07 % 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 seven (7) 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 seven (7) 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

<https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>

- 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 **three (3) 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.
- 4. 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 32.07% 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 **three (3) 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 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.
- 5. 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.

6. 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.
7. 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.
8. 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 subcontractors prior to any alteration of the HSP. The System shall document changes to the HSP by contract change order and the reasons for proposed change(s) shall be requested on a *Consultant/Subcontractor Substitution Form C-27b* and recorded in the procurement file (<http://www.tamus.edu/offices/fpc/forms/>). 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.
9. 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 3 and 4) 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).

10. 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.
11. 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 subcontractors, 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.
12. 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).
13. 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 subcontractors and suppliers (See prime contractor Progress Assessment Report Form located at the following link; <http://www.tamus.edu/offices/fpc/forms/>). 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)

Jeff Zimmermann
The Texas A&M University System
John B. Connally Building
301 Tarrow, 3rd Floor
College Station, Texas 77840-7896

Subject: HUB Subcontracting Plan
Project Number: 04-3187
Utility and Infrastructure Project
Tarleton State University
Stephenville, Texas

Dear Mr. Zimmermann:

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 04-3187.

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)