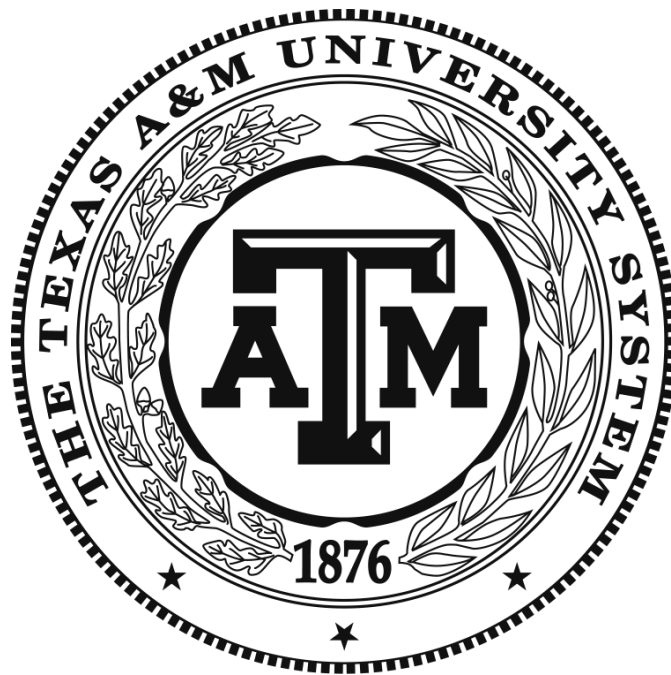


**AGREEMENT**  
**BETWEEN**  
**THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY**  
**SYSTEM**  
**AND**  
**PFLUGER ARCHITECTS, INC.,**  
**ARCHITECT/ENGINEER**



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**AGREEMENT  
BETWEEN  
THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY  
SYSTEM  
AND  
PFLUGER ARCHITECTS, INC.,  
ARCHITECT/ENGINEER**

This Agreement is effective as of March 5, 2024 (the “Effective Date”), by and between the **BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM** (“Owner”) and Pfluger Architects, Inc., Architect/Engineer (the “Architect/Engineer” or “A/E”) for the: Educare Building, construction project (the “Project”).

Owner intends to construct the Project at Texas A&M University – San Antonio, San Antonio, Texas, for which, under a total cost allocation, Fourteen Million, Six Hundred Fifty-One Thousand and no/100 Dollars (\$14,651,000.00) 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 the SECO Compliance Certification 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*. Architect/Engineer shall provide the Owner with the SECO Compliance Certification and associated compliance documentation as required.

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 review the Estimated Construction Cost prepared by the Construction Manager during all design phases and shall provide written comments. 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 upload documents to the Owner's project management information systems (PMIS) 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 PMIS for tracking comments, issues, questions, resolutions, decisions, directions and other information matters that arise during the development of the model(s), Drawings and Specifications for the Project. 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 have reviewed the previous comments and provided a response prior to the current submittal. Failure to respond to the previous comments or to provide responses 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 professional skill and care ordinarily provided by competent architects and engineers practicing in the same or similar locality and under the same or similar circumstances and professional license;

and as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect and engineer (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, 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 or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured 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. No policy will be canceled without unconditional written notice to Owner at least ten days before the effective date of the cancellation.

Coverages	Limit
A. Worker's Compensation	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident \$1,000,000 Disease/Employee \$1,000,000 Disease/Policy Limit
B. Automobile Liability	



Business auto liability insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for bodily injury and property damage.

**Option:** If a separate business auto liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the commercial general liability policy

C. Commercial General Liability

Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000
Personal/Advertising Injury	\$1,000,000
Products/Completed Operations	\$1,000,000
Damage to rented Premises	\$ 300,000
Medical Payments	\$ 5,000

The required commercial general liability policy will be issued on a form that insures Architect/Engineer or its consultant's liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

D. Umbrella Liability Insurance \$3,000,000

E. Professional Liability (Errors & Omissions)

The Architect/Engineer shall maintain Professional Liability that will cover all professional services rendered by or on behalf of Architect/Engineer and its consultants under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Architect/Engineer agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least two (2) years after the expiration of cancellation of this Agreement. 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

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance prior to the execution and delivery of this Agreement and prior to the performance of any services by Architect/Engineer under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

Commercial General Liability and Auto Liability policies will be endorsed to name The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and System Member as additional insureds up to the actual liability limits of the policies maintained by Architect/Engineer. The Commercial General Liability Additional Insured endorsements will include on-going and completed operations afforded by CG 20 10 (10 01 Edition or equivalent) and CG 20 37 (10 01 Edition or equivalent). Commercial General Liability and Business Auto Liability policies will be written on a primary and non-contributory basis. Copies of each endorsement must be submitted with the certificate of insurance. The Umbrella policy, at minimum, must follow form.

1.1.32 Architect/Engineer shall include The Texas A&M University System Board of Regents, The Texas A&M University System and Texas A&M University – San Antonio as additional insured on the Commercial General Liability and Automobile Liability policies, and the Workers' Compensation policy shall include a waiver of subrogation in favor of the Owner.

1.1.33 The Owner has or intends to select a Construction Manager for this Project (the "Construction Manager" or "Contractor"), and the Architect/Engineer shall coordinate its services and work collaboratively with the Construction Manager. The Owner may direct the Architect/Engineer to recognize the Construction Manager as its representative for the performance of various duties which are otherwise defined as the responsibility of the Owner. Architect/Engineer hereby acknowledges such appointment. Upon request, Architect/Engineer shall be entitled to review a redacted version of the agreement between the Owner and the Construction Manager for this project (the "CMAR Agreement"). Nothing in the CMAR Agreement shall confer direct responsibility on the Construction Manager for the Architect/Engineer's services, nor shall anything contained therein diminish Architect/Engineer's responsibility for its services as set forth hereunder. Likewise, nothing in the CMAR Agreement shall confer direct responsibility on the Architect/Engineer for the Construction Manager's services, nor shall anything contained therein effect the Architect/Engineer's responsibility for and scope of its services as set forth hereunder.

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

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

Architect/Engineer and the Construction Manager shall jointly provide a monthly status report stating the progress of the incorporation of the GMP qualifications, clarifications, assumptions, exclusions and value engineering and all other requirements into the Construction Documents.

1.1.36 The Architect/Engineer shall utilize Building Information Modeling (BIM) authoring software and BIM based design processes to produce model(s) for this project. The Architect/Engineer shall be knowledgeable of BIM use for all phases of the design and utilize data, graphics, and drawings derived from the model for decision making support and construction documentation as part of Basic Services. The Building Information Modeling (BIM) software shall be compliant with Industry Foundation Class file format.

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

1.1.38 During the design process the model(s) shall, at a minimum be utilized for Design Authoring, Design Reviews, Space Tracking, Cost Estimation, 3D Coordination, and Record Modeling.

1.1.39 During the bidding process the design team shall be required to provide the models and derived drawings to all proposers upon request.

1.1.40 During the construction process it is intended that the contractor utilize the model(s) for 3D Coordination, Fabrication.

1.1.41 The Architect/Engineer shall develop a project BIM Execution Plan documenting BIM uses, analysis technologies and workflows. The BIM Execution Plan shall be submitted to the Owner within 30 days of the execution of this Agreement. A combined BIM Execution Plan from both Architect/Engineer and Contractor is also acceptable.

1.1.42 The Architect/Engineer shall track the design net and gross square footage during design from the Program of Requirements through Construction Administration in an Excel format acceptable to Owner. is.

1.1.43 The Architect/Engineer shall utilize the PMIS applications e-Builder® and Autodesk Build as the primary systems for all project documentation through all phases of the Project. Architect/Engineer shall follow Owner's guidelines on the use of e-Builder® and Autodesk Build.

1.1.44 The Architect/Engineer shall at each stage of review described in Paragraph 15.7 follow the naming standards set forth in the Facility Design Guidelines and upload to Autodesk Build all Drawings, Specifications and basis of design in PDF file format and model(s) in native file format (i.e. RVT). The Architect/Engineer shall, in addition , upload to e-Builder® drawings

in native file format (i.e. DWG) of floor plans and site plan(s) for the 100% submission of Schematic Design, Design Development and Construction Documents. The Architect/Engineer shall incorporate into the model(s), 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.

1.1.45 Architect/Engineer, at the Architect/Engineer's expense, at each stage of review described in Paragraph 15.7, shall furnish and deliver to the Owner the number of complete printed copies of all Drawings, Specifications and basis of design as enumerated in paragraph 15.7, which copies shall become the property of the Owner. The Architect/Engineer shall pay for the reproduction of all Plans, Specifications and other documents for use by the Architect/Engineer and its consultants.

1.1.46 The Architect/Engineer shall cooperate and coordinate design and construction services with other services provided to Owner under separate contracts. Separate contracts may include, but are not necessarily limited to, the following:

- a). Owner supplied furnishings and equipment.
- b). Owner's document review services.
- c). Owner's quality assurance services.

1.1.47 As a part of Basic Services, the A/E shall, in accordance with Tx. Govt. Code Chapter 2252 specify iron and steel products that are produced in the United States. The A/E shall notify the Owner of any specified iron and steel product not produced in the United States. The A/E shall also advise the Owner if any of the exemptions identified in Chapter 2252 such as availability and quality might apply.

1.1.48 The A/E shall as each stage of the design identify all elements that are intended to be delegated design for Owner's review and concurrence.

## 1.2 Schematic Design Phase

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

1.2.2 Architect/Engineer shall provide all services necessary to perform the services of this phase (preparation of model(s), relevant data, decision support model views and Schematic

Design Documents) including, without limitation, unless otherwise approved by Owner, the preparation and prompt delivery of all items specified in the BIM Execution Plan and “Facility Design Guidelines”.

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

1.2.4 The Architect/Engineer shall review the Estimated Construction Cost prepared by the Construction Manager, and shall provide written comments.

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

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

### 1.3 **Design Development Phase**

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

1.3.2 As a part of Design Development Phase, Architect/Engineer shall accomplish model coordination, aggregation and “clash detection” to remove conflicts in design between systems, structures and components. Architect/Engineer shall utilize Owner’s PMIS to accomplish model coordination and collaborate with Construction Manager in the resolution of critical clashes identified by the Construction Manager. Architect/Engineer shall demonstrate and provide written assurance to Owner that conflicts/collisions between models have been resolved.

1.3.3 The Architect/Engineer shall review the Estimated Construction Cost prepared by the Construction Manager, and shall provide written comments.

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

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

1.3.6 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.

1.3.8 At the completion of the Design Development Phase, or such other time as Owner may specify to Architect/Engineer, at Owner's sole option and discretion, Owner will furnish Architect/Engineer with a Guaranteed Maximum Price proposal prepared by Construction Manager based upon the Design Development documents prepared by the Architect/Engineer and approved by the Owner. The Architect/Engineer shall assist the Owner and endeavor to further and advocate the Owner's interests in Owner's communications with the Construction Manager in an effort to develop a Guaranteed Maximum Price proposal acceptable to Owner, in Owner's sole option and discretion. If the Owner does not accept the Construction Manager's Guaranteed Maximum Price proposal, the Architect/Engineer shall participate with the Owner and Construction Manager in constructability reviews and shall revise the documents as necessary in order to reach an agreement. If the Construction Manager's Guaranteed Maximum Price proposal exceeds the Schematic Design Phase Estimated Construction Cost prepared by, or otherwise accepted by the Construction Manager due to an increase in the scope of the Project caused by further development of the design documents by the Architect/Engineer to the extent that such could not be reasonably inferred by the Construction Manager from the Schematic Design documents, and Owner directs Architect/Engineer to revise the documents, the Architect/Engineer shall revise the documents at its own expense so that the Guaranteed Maximum Price proposal for constructing the Project shall not exceed the Owner's Amount Available for the Construction Contract and any previously approved Estimated Construction Costs. If it is determined to be in the Owner's best interest, instead of requiring the Architect/Engineer to revise the Drawings and Specifications, the Owner reserves the right to accept a Guaranteed Maximum Price proposal that exceeds the stipulated Amount Available for the Construction Contract. The Architect/Engineer shall analyze the final Guaranteed Maximum Price proposal document, together with its supporting assumptions, clarifications, and contingencies, and shall submit a detailed written analysis of the document to the Owner. Such analysis shall include, without limitation, reference to and explanation of any inaccurate or improper assumptions and clarifications. The A/E will not be required to make revisions to the documents at its own expense

under the provisions of this paragraph if the Owner's rejection of the Guaranteed Maximum Price proposal is not due to a failure of the A/E to provide the services otherwise required herein.

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

#### **1.4 Construction Document Phase**

1.4.1 Based on the approved Design Development Documents, Guaranteed Maximum Price, coordinated models and any further adjustments in the scope or quality of the Project or in the Amount Available for the Construction Contract authorized by the Owner, the Architect/Engineer shall prepare, for approval by the Owner and review by the Construction Manager, Construction Documents consisting of Drawings, Schedules and Specifications derived from the model(s) in accordance with Owner's written requirements setting forth in detail the requirements for construction of the Project, including, without limitation, the BIM Execution Plan and "Facility Design Guidelines". The Plans, Drawings and Specifications for the entire Project shall be so prepared that same will call for the construction of the building and related facilities, together with its built-in permanent fixtures and equipment which will cost not more than the Guaranteed Maximum Price accepted by Owner, or the Amount Available for the Construction Contract established by Owner if no Guaranteed Maximum Price proposal has been accepted by Owner. The Architect/Engineer will be responsible for managing the design to stay within such Guaranteed Maximum Price proposal or Amount Available for the Construction Contract. The Architect/Engineer shall review the Construction Documents as they are being prepared at intervals appropriate to the progress of the Project with the Owner and Construction Manager at the Project site or other location specified by Owner in the State of Texas. The Architect/Engineer shall utilize the model(s) to support the review process during Construction Documents. The Architect/Engineer shall allow the Construction Manager to utilize the information uploaded into Owner's PMIS to assist the Construction Manager in fulfilling its responsibilities to the Owner.

1.4.2 As a part of Construction Documents Phase, Architect/Engineer shall accomplish model coordination, aggregation and "clash detection" to remove conflicts in design between systems, structures and components. Model coordination shall occur at all reviews during the Construction Documents Phase as identified in the BIM Execution Plan. Architect/Engineer shall utilize Owner's PMIS to accomplish model coordination and collaborate with Construction Manager in the resolution of critical clashes identified by the Construction Manager. Architect/Engineer shall demonstrate and provide written assurance to Owner that conflicts/collisions between models have been resolved.

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

of the necessary bidding information, bidding forms, RFP information, and RFP forms, and the Conditions of the Contract.

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

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

1.4.6 The Architect/Engineer shall review the Estimated Construction Cost prepared by the Construction Manager, and shall provide written comments.

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

1.4.8 The Architect/Engineer shall provide a list of all manufacturer warranties and submittals that are required by their specification.

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

## **1.5 Bidding and Proposal Phase**

1.5.1 In conjunction with the development of the Guaranteed Maximum Price and at other times as appropriate to the Project, the Architect/Engineer shall assist the Owner and Construction Manager by receiving and recording requests for Bid and Request for Proposal ("RFP") Documents, receiving and resolving questions about Bid and RFP Documents; preparing addenda, issuing addenda, and accounting for addenda issued; attending pre-bid and pre-proposal conferences and HUB meetings; evaluating bids and proposals; and assisting in preparing and awarding multiple contracts for construction. Architect/Engineer shall answer inquiries from bidders and proposers at Owner's request, and shall prepare and issue any necessary addenda to the bidding or proposal documents.

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

1.5.3 In the event the Guaranteed Maximum Price proposal received for the Project exceeds the Final Amount Available for the Construction Contract as approved by the Board of



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

#### **1.6 Construction Phase - Administration of the Construction Contract**

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

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

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

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

1.6.5 The Architect/Engineer shall have authority to act on behalf of the Owner to the extent provided in the Contract Documents. Duties, responsibilities and limitations of authority of the Architect/Engineer shall not be restricted, modified or extended without written acceptance of the Owner.

1.6.6 Site Visits. The Owner and Contractor will have weekly meeting during the construction period. 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 document its site visits and meetings in e-Builder®. 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 online Application for Payment in an appropriate amount.

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

1.6.11 The Architect/Engineer shall be the interpreter of the technical requirements of the Contract Documents and the judge of the performance of the work of the Contractor. The

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

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

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

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

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

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

1.6.17 Architect/Engineer shall prepare revised Construction Documents, where appropriate, to illustrate and document the work required by ASIs, RFIs and 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 revised Construction Documents shall be derived from revised model(s). Such revisions shall be clearly indicated and a current revision date shall be included. Changes to the Specifications shall be made by consecutively numbered and dated addenda. All changes to design documents or Specifications will be identified with date of change, revision number and other customary identification references. Areas changed on Drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.

1.6.18 Architect/Engineer and its consultants shall conduct and participate in concealed space observations (in-wall and above ceiling), 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 enter into Autodesk Build items observed as deficiencies in the Work, requiring remedial work or replacement. The Architect/Engineer shall review the corrected and/or replaced work and assist in verification of correction of all items.

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

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

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

1.6.22 Architect/Engineer shall throughout construction maintain and keep current the model(s) and Construction Documents by incorporating all Addenda, RFIs, ASIs and Change Orders. Upon Final Completion of the construction, the Architect/Engineer shall deliver copies to the Owner, as follows:

- Specifications: Provide an electronic set of final specifications by section number incorporating all changes in PDF uploaded to Owner's PMIS.
- Drawings: Provide an electronic set of final drawings by individual sheet incorporating all changes in DWG (references attached) and PDF format uploaded to Owner's PMIS.
- Model(s): Provide an electronic set of all models upgraded to latest version incorporating all changes in native and IFC file format uploaded to Owner's PMIS.
- The A/E shall verify that all model links are intact and in working condition.
- All electronic documents shall be named according to Facility Design Guidelines.

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 punch lists and inspection of corrected punch list items..

## 1.7 Additional Services

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

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

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

## 1.8 Time

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

1.8.2 Included in the Program of Requirements is a schedule for completion of each of the phases of services to be performed by Architect/Engineer pursuant to this Agreement. The project schedule contains milestone dates which have been established in the Request for Qualifications previously issued or may be modified by the Owner to reflect current conditions. The Architect/Engineer shall coordinate with the Construction Manager in the preparation and

maintenance of the schedule for performance of the professional services for the Project, including the Architect/Engineer's services. Changes in this schedule may be made only with the written approval of Owner. Architect/Engineer shall perform all of its services in accordance with the then-current schedule approved by Owner.

## **Article 2** **Owner's Responsibilities**

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

2.2 The Owner will provide a preliminary project budget and schedule for the Project. The budget will include the Amount Available for the Construction Contract, contingencies for changes in the Work during construction, and other costs which are the responsibility of the Owner.

2.3 The Owner designates the Chief Facilities Officer 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 Chief Facilities Officer 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 14. Comments concerning corrections or amendments to the model(s), Plans and Specifications will be furnished in writing to the Architect/Engineer as promptly as possible after receipt of the documents for review. Owner's approval of the documents must be in writing and no approval may be deemed given in the absence of written approval. The Owner may require the Architect/Engineer to halt production during design review.

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

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

### **Article 3** **Construction Cost—Definition**

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

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

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

#### **Article 4 Personnel Titles and Hourly Rates**

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

#### **Article 5 Reimbursable Services**

5.1 Reimbursable Services are in addition to the Compensation for Basic Services and Additional Services. These include actual not-to-exceed expenditures made by the Architect/Engineer and the Architect/Engineer's consultants incurred solely and directly in connection with Architect/Engineer's performance of its services as identified in Article 15 Reimbursable Services.

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 Article 15. 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 Request for Qualifications.



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

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

## **6.2 Fees for Changes in Project Scope**

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

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

## **6.3 Fees for Change Order Services**

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

## **6.4 Additional Services**

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

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

## **6.5 Reimbursable Services**

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

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

## **Article 7 Payments to the Architect/Engineer**

### **7.1 Payments for Basic Services**

7.1.1 Payments for Basic Services shall be made 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 included in e-Builder®. Each Statement for Architectural/Engineering Services must be accompanied by an HSP-Prime Contractor Progress Assessment Report in the form located at <https://www.tamus.edu/business/hub-procurement/hub-programs/>.

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

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

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

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

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

7.1.7 All payments to A/E shall be by electronic direct deposit. A/E is required to complete and submit to Owner a Vendor Direct Deposit Authorization prior to the first payment request. Form can be accessed at [www.window.state.tx.us/taxinfo/taxforms/74-176.pdf](http://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.
- g) Architect/Engineer fails to obtain, maintain or renew insurance coverage as required by this Agreement.

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 digital and reproducible copies, of all model(s), model data, schedules and Drawings and Specifications for information and reference in connection with the Owner's use and occupancy of the Project upon payment of the amounts due under this Agreement. Owner shall have an irrevocable, paid-up, and perpetual non-exclusive license and right, which shall survive the termination of this Agreement, to use the all model(s), model data, schedules and Drawings and Specifications, including the originals thereof, and the ideas and designs contained therein, for any purpose related to the construction, maintenance or use of the Project and for informational purposes for any future project by the Owner, regardless of whether Architect/Engineer remains as the Architect/Engineer, has resigned, this Agreement has been terminated, Architect/Engineer's scope of services has been modified, or the services herein have been completed. If this Agreement is terminated, Architect/Engineer hereby consents to the employment by Owner of a substitute architect/engineer to complete the services under this Agreement. The Architect/Engineer and its consultants shall not be liable for any use of such information that are inconsistent with the purposes for which the Architect/Engineer provided such information or changes made by the Owner to the model(s), model data, schedules and Drawings or Specifications or for claims or actions arising from the Architect/Engineer's incomplete services or from any such alternative use or changes on projects in which the Architect/Engineer is not involved.

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

## **Article 10 Termination of Agreement**

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

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

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

10.4 A termination under this Article shall not relieve Architect/Engineer or any of its employees of liability for violations of this Agreement, or any willful, negligent or accidental act

or omission of Architect/Engineer. The provisions of Article 9 hereof shall survive the termination of this Agreement. In the event of a termination under this Article, Architect/Engineer hereby consents to employment by Owner of a substitute architect/engineer to complete the services under this Agreement.

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

### **Article 11 Successors and Assigns**

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

### **Article 12 Extent of Agreement**

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

### **Article 13 Business Ethics Expectation**

13.1 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.

13.2 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.

13.3 Architect/Engineer agrees to notify Billy C. Hamilton, Deputy 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.

13.4 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.

13.5 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, Deputy Chancellor and Chief Financial Officer  
Office of Facilities Planning & Construction  
The Texas A&M University System  
301 Tarrow Street, 2<sup>nd</sup> Floor  
College Station, Texas 77840-7896

With Copies to:

Brett McCully, Chief Facilities Officer  
Office of Facilities Planning & Construction  
The Texas A&M University System  
301 Tarrow Street, 2<sup>nd</sup> Floor  
College Station, Texas 77840-7896

Randy Wipke, Director  
Office of Facilities Planning & Construction  
The Texas A&M University System  
301 Tarrow Street, 2<sup>nd</sup> Floor  
College Station, Texas 77840-7896

If to Architect/Engineer: Chris Lammers  
Pfluger Architects, Inc.  
200 E. Grayson Street  
San Antonio, Texas 78215

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.

14.20 **Public Information.** Architect/Engineer acknowledges that Owner is strictly obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

In accordance with Section 552.372 of the Texas Government Code, Architect/Engineer agrees to (1) preserve all contracting information related to this project as provided by the records retention requirements applicable to the Owner for the duration of the contract, (2) promptly provide to the Owner any contracting information related to the contract that is in the custody or possession of the Architect/Engineer on request of the Owner, and (3) on termination or expiration of the contract, either provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the Architect/Engineer or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Architect/Engineer agrees that the contract can be terminated if the Architect/Engineer knowingly or intentionally fails to comply with a requirement of that subchapter.

Architect/Engineer acknowledges that Owner **may be** required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

**14.21 Certification regarding Boycotting Israel.** Architect/Engineer acknowledges that Owner is obligated to comply with Chapter 2270, *Texas Government Code*. By executing this Agreement, Architect/Engineer certifies it does not and will not, during the performance of this Agreement, boycott Israel. Architect/Engineer acknowledges this Agreement may be terminated if this certification is inaccurate.

**14.22 Certification regarding Business with Certain Countries and Organizations.** Architect/Engineer acknowledges that Owner is obligated to comply with Subchapter F, Chapter 2252, *Texas Government Code*. By executing this Agreement, Architect/Engineer certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Architect/Engineer acknowledges this Agreement may be terminated if this certification is inaccurate.

**14.23 Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this 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.

14.24 Architect/Engineer is responsible to ensure that employees participating in work for any A&M System member have not been designated by the A&M System as Not Eligible for Rehire as defined in System policy [32.02, Section 4](#). Non-conformance to this requirement may be grounds for termination of this agreement.

**14.25 Disclosure of Interested Parties.** By signature hereon, Architect/Engineer certifies that, if the value of this agreement exceeds \$1 Million, it has complied with Section 2252.908 of the Texas Government Code and Part 1 Texas Administrative Code Section 46.1 through 46.3 as implemented by the Texas Ethics Commission (TEC), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Architect/Engineer.

**14.26 Architect/Engineer Verification Regarding Discrimination Against Firearm Entities or Trade Associations.** Pursuant to Chapter 2274, Texas Government Code (enacted by SB 19, 87th Texas Legislature, Regular Session (2021)), Architect/Engineer verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Architect/Engineer acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate. **[Note:** This provision does not apply to: (1) contracts below \$100,000; (2) contracts with a sole-source provider; and (3) contracts with a non-profit entity, sole proprietorship, or a for-profit entity that has less than 10 full time employees.

14.27 Architect/Engineer certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on

entry to, to gain access to, or to receive service from the Architect/Engineer's business. Architect/Engineer acknowledges that such a vaccine or recovery requirement would make Respondent ineligible for a state-funded contract.

14.28 Architect/Engineer represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2276.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Architect/Engineer shall promptly notify Owner. Architect/Engineer acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

14.29 Architect/Engineer certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration.

14.30 **Indemnification.** To the extent permitted by the Constitution and laws of the State of Texas, Architect covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, Owner and the elected and appointed officials, employees, officers, directors, volunteers, and representatives of Owner, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death or property damage, made upon Owner directly or indirectly arising out of, resulting from or related to Architect's services under this Agreement, including any acts or omissions of Architect, or any agent, officer, director, representative, employee, or consultant of Architect, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of Owner, its officers or employees, separate contractors or assigned contractors, in instances where such negligence causes personal injury, death or property damage. IN THE EVENT ARCHITECT AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

14.31 Architect/Engineer represents and warrants that the goods it provides to Owner under this Agreement, if any, are not produced in or exported from the Gaza Strip or from any organization or state actor with ties to Hamas.

## 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. Architectural Services
- b. Landscape Architectural Services
- c. Civil Engineering Services
- d. Structural Engineering Services
- e. Mechanical Engineering Services
- f. Electrical Engineering Services
- g. Plumbing Engineering Services
- h. Audio Visual/Data & Telecommunications Engineering

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

- a. Site Survey
- b. Geotechnical Investigation
- c. FF&E services
- d. Commissioning Services
- e. Registered Accessibility Specialist
- f. Cost Estimating Services

### 15.3 Basis of Compensation

#### 15.3.1 Basic Services.

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

Fourteen Million, Six Hundred Fifty-One Thousand and no/100 Dollars (\$14,651,000.00)

The negotiated Basic Services Fee for the Project is

One Million, Two-Hundred Thirty-Seven Thousand and No/100 Dollars (\$1,237,000.00).

#### 15.3.2 Reimbursable Services.

Site Survey:	Not to Exceed \$ 24,000.00
Geotechnical Investigation:	Not to Exceed \$ 55,000.00
FF&E Services	Not to Exceed \$ 90,000.00
Commissioning Services	Not to Exceed \$ 68,500.00
Registered Accessibility Specialist	Not to Exceed \$ 4,000.00
Cost Consultant	Not to Exceed \$ 47,000.00
Code Consultant	Not to Exceed \$ 20,000.00

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

**Maximum Reimbursable Expense Amount: \$ 308,500.00**

15.3.3 Maximum Contract Sum

Basic Services Fee amount (Para 15.3.1) \$1,237,000.00

*plus*

Maximum Reimbursable Expense Amount (Para 15.3.2) \$ 308,500.00

**MAXIMUM CONTRACT SUM: \$1,545,500.00**

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%
Construction Phase:	20%
Final Drawings	5%

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:

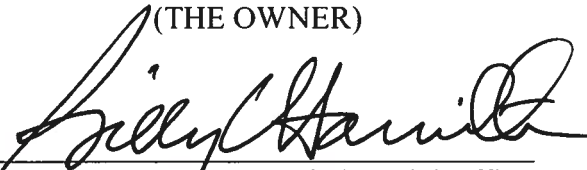
25%, 65%, 100%

**[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)

Pfluger Architects  
(THE ARCHITECT/ENGINEER)

By   
Deputy Chancellor and Chief Financial Officer

By   
(Signature)

Chris Lammers, AIA  
(Print or Type Name)

Date 3/5/24

Date February 26, 2024

APPROVAL RECOMMENDED:

  
Chief Facilities Officer  
Office of Facilities Planning & Construction

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

Date 3-4-24

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:

  
Assistant General Counsel

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Date 3/4/24

Name: \_\_\_\_\_

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

EXHIBITS

- Ex A Personnel Titles and Hourly Rates
- Ex B BIM Execution Plan
- Ex C Federal Funding Terms and Conditions



**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.**

<u><b>Firm/Position Classification</b></u>	<u><b>Hourly Billing Rate</b></u>
<b>Architecture (Pfluger Architects/Architect of Record)</b>	
Principal/ Higher Ed Director	\$310/hr
Senior Associate	\$245/hr
Project Manager	\$245/hr
Project Architect I	\$185/hr
Project Architect II	\$185/hr
Project Designer	\$185/hr
Construction Administrator	\$195/hr
Intern Architect	\$145/hr
BIM/CADD Technician	\$145/hr
Administrative Staff	\$135/hr
<b>Design Architecture (RDG/ Associate Architect)</b>	
Principal/Principal Emeritus	\$280/hr
Associate Principal	N/A
Project Manager	\$245/hr
Project Architect I	\$130/hr
Project Architect II	\$155/hr
Project Designer	\$185/hr
Construction Administrator	\$175/hr
Intern Architect	\$135/hr
BIM/CADD Technician	\$155/hr
Administrative Staff	\$125/hr
<b>MEP Engineering (Moose Engineers, LLC)</b>	
Principal	\$290/hr
Associate Principal	N/A
Senior Project Manager	N/A
Project Manager	\$180/hr
Senior Engineer	N/A
Engineer	N/A
Electrical Engineer	\$225/hr
Mechanical Engineer	\$220/hr
Mechanical Designer	\$175/hr
Electrical Designer	\$185/hr
Plumbing Designer	\$170/hr
Graduate Engineer	N/A
Engineering Designer	N/A
Construction Administrator	\$170/hr
BIM/CADD Technician	\$140/hr
Administrative Staff	\$120/hr

**Firm/Position Classification**

**Hourly Billing Rate**

**Structural Engineering (Intelligent Engineering Services, LLP (IES))**

Principal	\$265/hr
Associate Principal	N/A
Senior Project Manager	N/A
Project Manager	\$230/hr
Senior Engineer	\$215/hr
Engineer	N/A
Graduate Engineer	\$200/hr
Engineering Designer	N/A
Construction Administrator	N/A
BIM/CADD Technician	\$140/hr
Administrative Staff	\$80/hr

**Civil Engineering (Gessner Engineering)**

Principal / Partner	\$240/hr
Associate Principal	\$180/hr
Senior Project Manager	\$180/hr
Project Manager	\$150/hr
Senior Engineer	\$180/hr
Engineer	\$150/hr
Graduate Engineer	\$125/hr
Engineering Designer	\$105/hr
Construction Administrator	\$125/hr
BIM/CADD Technician	\$80/hr
Administrative Staff	\$75/hr

**Landscape Architecture (Coleman and Associates)**

Principal	\$130/hr
Landscape Architect	\$115/hr
Administrative Staff	\$75/hr

**Cost Consultant (Project Cost Resources (PCR))**

Principal	\$210/hr
Senior Estimator Estimator	\$185/hr
Estimator	\$85/hr
Administrative Staff	\$65/hr

**Data/Telecommunications Consultant (COMBS)**

Principal	\$200/hr
Associate	N/A
Senior Consultant	N/A
Consultant	\$175/hr
Designer	\$175/hr
Contract Administrator	N/A
BIM/CADD Technician	\$95/hr
Administrative Staff / Clerical	\$75/hr

**Hourly Billing Rate**

**Acoustical/Audio-Visual Consultant (COMBS)**

Principal	\$200/hr
Associate Principal	N/A
Senior Consultant	N/A
Consultant	\$175/hr
Designer	\$175/hr
Contract Administrator	N/A
BIM/CADD Technician	\$95/hr
Administrative Staff	\$75/hr

**Laboratory Consultant (N/A)**

Principal	N/A
Laboratory Consultant	N/A
Laboratory Design Engineer	N/A
Technical Coordinator	N/A
Laboratory Programmer	N/A
Laboratory Designer	N/A
Production Coordinator	N/A
BIM/CADD Technician	N/A
Technical Writer	N/A
Administrative Staff	N/A

**Security Consultant (COMBS)**

Principal	\$200/hr
Project Director	N/A
Project Manager	N/A
Project Consultant	\$175/hr
Project Engineer	N/A
BIM/CADD Technician	\$95/hr
Administrative Staff	\$75/hr

## **EXHIBIT B BIM Execution Plan**

### **DEVELOPED BY**

(Name and Company) Pfluger Architects, in partnership with RDg

### **PROJECT INFORMATION**

The intent of this BIM Execution Plan is to provide a framework that will let the owner, design team, and contractor deploy building information modeling (BIM) technology and best practices on this project faster and more cost-effectively. If the delivery method is competitive sealed proposal then the contractor will be included in this Execution Plan at a later date. This plan delineates roles and responsibilities of each party, the detail and scope of information to be shared, relevant business processes and supporting software.

To successfully implement Building Information Modeling (BIM) on a project, the project team has developed this detailed BIM Project Execution Plan. The BIM Project Execution Plan defines uses for BIM on the project (e.g. design authoring, cost estimating, and design coordination), along with a detailed design of the process for executing BIM throughout the project lifecycle.

**Project Name:** Educare Building

**Brief Project Description:** A new single-story, 24,000 GSF building to include early childhood classrooms, administrative suite and ancillary spaces.

**Additional Project Information:** CCL \$19.79M

**Construction Delivery Method:** CMAR

### **Project Schedule/Phases/Milestones:**

Include BIM milestones, pre-design activities, major design reviews, stakeholder reviews, and any other major events which occur during the project lifecycle.

Project Phase/Milestone	Estimated Start Date	Estimated Completion Date	Project Stakeholders Involved
Schematic Design	February 26, 2024	April 29, 2024	May 7, 2024
Design Development	May 7, 2024	July 15, 2024	July 30, 2024
Construction Documents	July 30, 2024	October 28, 2024	November 7, 2024
Facility Data Review	November 7, 2024		
Construction	December 6, 2024	April 2026	

### KEY PROJECT CONTACTS

List of lead BIM contacts for each organization on the project. Additional contacts can be included later in the document.

Organization	Contact Name	Role/Title	Location	Email	Phone
	Reference attachment Pfluger	BIM Execution Plan dated 02.16.2024			

(Preference is for all consultants to utilize a BIM authoring tool or 3D CADD tool)

### BIM PROCESSES AND COLLABORATION PROCEDURES

Describe the collaboration strategies used for developing the BIMs for the following applicable processes. Identify project team participants for each.

Existing Conditions

Design Authoring

Design Reviews (Design reviews will be conducted in Autodesk Build)

Space Tracking

Energy Analysis

Daylighting Analysis

Cost Estimation

3D Coordination (Design coordination will be conducted in Autodesk Model Coordination.

Contractor can utilize FPC Autodesk Model Coordination for construction coordination if desired. All models and 3D CADD files to be uploaded for coordination)

Model Updates during Construction (Design team to update models for all plan changes during construction per this agreement)

Final Models (Design team to provide models in start version as well as latest version in use)

Other (describe)

### Model Delivery Schedule, Application and File Exchange Type

Document the information exchanges and file transfers that will occur on the project.

Discipline	BIM Use	File Sender/Receiver	One-Time or Frequency	Due Date or Start Date	Model File	Model Software	Native File Type	Version	File Exchange Type
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### BIM AND DATA QUALITY CONTROL

Describe the strategy to control the quality of the model(s) and the checks to be performed to assure quality.

Checks	Definition	Responsible Party	Software	Frequency
Visual Check	Ensure there are no unintended model components and the design intent has been followed			
Interference Check	Detect problems in the model where two building components are clashing including soft and hard	Design team uploads models Construction Managers leads meeting to review critical clashes	Autodesk BIM Collaborate	Begins with Detailed Design Review and shall occur at each Construction Documents review meeting
Standards Check	Ensure that the BIM and CADD Standard have been followed (fonts, dimensions, line styles, levels/layers, etc.)			
Model Integrity Checks	Describe the QC validation process used to ensure that the Project Facility Data set has no undefined, incorrectly defined or duplicated elements and the reporting process on non-compliant elements and corrective action plans			
Other				

### MODEL STRUCTURE

File Naming Structure (Do not include project number or project name in file name. Do include at the end the software version number)

File Name Formatting	
Architectural Model	
Structural Model	
Mechanical Model	
Plumbing Model	
Fire Sprinkler Model	
Electrical Model	

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### Model Structure

Describe and diagram how the model is separated (building, floor, zone, area and/or discipline).

### Measurement and Coordinate System

Describe the measurement system and coordinate system used.

### Model Accuracy and Tolerances

Models should include all appropriate dimensioning as needed for design intent, analysis, and construction. Level of detail and included model elements are provided in the Information Exchange Worksheet.

Phase	Discipline	Tolerance
Design Documents		ACCURATE TO +/- [ # ] OF ACTUAL SIZE AND LOCATION
Shop Drawings		ACCURATE TO +/- [ # ] OF ACTUAL SIZE AND LOCATION
		ACCURATE TO +/- [ # ] OF ACTUAL SIZE AND LOCATION

### PROJECT DELIVERABLES

In this section, list the BIM deliverables for the project and the format in which the information will be delivered.

BIM Submittal Item	Stage	Approximate Due Date	Format	Notes

### ATTACHMENTS

List any supporting information and attach.

Pfluger BIM Execution Plan dated 02.16.2024

**Texas A&M University San Antonio**  
**Educate Building - BIM Execution Plan**

**02.16.2024**

**pfluger**



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## SECTION A: PROJECT INFORMATION

### PROJECT DATA

**Project Name:** Educare Building

**Project Address:** One University Way, San Antonio, TX 78224

**Project Number:**           **Owner:** 25-3304

**Pfluger:** 24-013

**CM:**

**Contract Number:**

**Contract Type:** CMAR

**Project Description:** A new single-story, 24,000 GSF early childhood facility

### PROJECT SCHEDULE

Project Phase / Milestone	Estimated Start Date	Estimated Completion Date	Project-Design Stakeholders Involved
50% Schematic Design	February 26, 2024	March 25, 2024	
100% Schematic Design	March 25, 2024	April 29, 2024	May 7, 2024
50% Design Development	May 7, 2024	June 4, 2024	
100% Design Development	June 4, 2024	July 30, 2024	July 30, 2024
50% Construction Documents	July 30, 2024	August 20, 2024	
75% Construction Documents	August 27, 2024	September 17, 2024	November 7, 2024
100% Construction Documents	September 24, 2024	October 28, 2024	

**See CM BEP for construction phase milestones.**

### KEY PROJECT CONTACTS

Company	Role	Contact Name	Location	Email	Phone
Owner	Project Manager				
Owner	BIM Manager				
Pfluger	Project Manager	Josh Newton	San Antonio	joshua.newton@pflugerarchitects.com	210.227.2724
Pfluger	Project Architect	Kent Brittain	San Antonio	kent.brittain@pflugerarchitects.com	210.227.2724
Pfluger	BIM Manager	Levi Sanciu	San Antonio	levi.sanciu@pflugerarchitects.com	210.227.2724



RDg	Project Architect	Greg Galbreath	Omaha, NE	ggalbreath@rdgusa.com	402.392.0133
RDg	Project Manager		Omaha, NE		402.392.0133
RDg	BIM Manager	Molly Haas	Omaha, NE	mhaas@rdgusa.com	402.392.0133
MEP	Project Manager		San Antonio	Cleary Zimmerman	210.447.6100
MEP	BIM Manager		San Antonio	Cleary Zimmerman	210.447.6100
Structural	Project Manager	Joe Huizar	San Antonio	Intelligent Engineering Services	210.349.9098
Structural	BIM Manager		San Antonio	Intelligent Engineering Services	210.349.9098
Landscape	Project Manager		Austin	Coleman & Associates	512.476.2090
Technology	Project Manager		San Antonio	Combs Consulting	210.698.7887
Civil	Project Manager		San Antonio	Gessner Engineering	210.305.4792

## SECTION B: PROJECT GOALS

Goals	Actions to Implement	Evidence that goal is achieved...	Project Participants involved
Use 3D models as visual tool to facilitate: <ul style="list-style-type: none"> <li>- Decision Making</li> <li>- Efficient interactions with Project Team.</li> <li>- Understanding of project relationships and constraints</li> </ul>	<ul style="list-style-type: none"> <li>- Arrange for access to model for project participants</li> <li>- Provide training necessary to enable interaction with model for respective tasks</li> </ul>	<ul style="list-style-type: none"> <li>- Reduction in late changes to project</li> <li>- Deeper understanding of project by stakeholders enabling more efficient and timely decisions</li> </ul>	<ul style="list-style-type: none"> <li>- Pfluger &amp; Consultants</li> <li>- CM</li> <li>- OWNER</li> </ul>
Model-based validation of the building program	<ul style="list-style-type: none"> <li>- Define properties in the models that support automatic reporting of program data</li> </ul>	<ul style="list-style-type: none"> <li>- The design meets the program requirements in all phases</li> </ul>	<ul style="list-style-type: none"> <li>- Pfluger &amp; Consultants</li> <li>- CM</li> <li>- OWNER</li> </ul>
Design Coordination	<ul style="list-style-type: none"> <li>- Involve all relevant consultants or disciplines in the model-based coordination process</li> <li>- Define and model all relevant building elements</li> <li>- Implement effective process to identify and resolve conflicts</li> </ul>	<ul style="list-style-type: none"> <li>- Minimize constructability and coordination-related change orders</li> <li>- Minimal Field RFIs in the construction phase</li> </ul>	<ul style="list-style-type: none"> <li>- Pfluger &amp; Consultants</li> <li>- CM</li> <li>- OWNER</li> </ul>
Submission of Conformed Models/ Handover Models and A/E model updates during construction	<ul style="list-style-type: none"> <li>- As Addenda and Proposal Requests are issued so are the revised A/E models.</li> </ul>	<ul style="list-style-type: none"> <li>- The As-Built Model is complete and accurate at project completion for immediate turnover.</li> </ul>	<ul style="list-style-type: none"> <li>- Pfluger &amp; Consultants</li> <li>- CM &amp; Subs</li> <li>- OWNER</li> </ul>

## SECTION C: BIM USES

BIM Use Cases	Author	Users	File Type, Version
<p><b>Existing Conditions Models</b> Develop models of existing conditions and verify in field.</p> <p>Uses: Models to be used for creation of demolition scope and shell for coordination.</p>	Pfluger	Pfluger, Consultants, OWNER, CM	Revit 2024 (rvt)
<p><b>Schematic / Preliminary Design</b> Quality: Overall building massing indicative of area, height, volume, location, and orientation may be modeled in three dimensions or represented by other data.</p> <p>Uses: Models to be used for presentations and collaboration meetings including design charrettes. The model may be used to develop a cost estimate based on current area, volume or similar conceptual estimating techniques (e.g., square feet of floor area). The model may be used for project phasing.</p>	Pfluger, Consultants,	Pfluger, OWNER, CM	Revit 2024 (rvt)
<p><b>Design Development</b> Quality: Model elements are modeled as generalized systems or assemblies with approximate quantities, size, shape, location, and orientation. Non-geometric information may also be attached to Model Elements.</p> <p>Uses: Models to be used for presentations and collaboration meetings including design charrettes. Models are accurate for takeoff of general elements. Material quantities are accurate for takeoff. The model may be used to show order, time-scaled appearance of major elements and systems.</p>	Pfluger, Consultants,	Pfluger, OWNER, CM	Revit 2024 (rvt)
<p><b>Design Coordination Reviews</b> Architectural design models will be clashed to coordinate MEP, Structural, and Kitchen systems throughout the Construction Documents phase.</p> <p>Uses: Create a coordinated set of Architectural, Structural, Kitchen, and MEP documents. Coordinate design models with Existing Conditions models.</p>	CM	Pfluger, Consultants, OWNER, CM	Autodesk Construction Cloud

<p><b>Construction Documentation</b>  Quality: Model elements are modeled as specific assemblies accurate in terms of quantity, size, shape, location, and orientation. Non-geometric Information may also be attached to Model Elements.</p> <p>Uses: Models can be used as basis of sub-contractor understanding of the design intent. The model may be analyzed for performance of selected systems by application of specific performance criteria assigned to the representative model elements. The model may be used to show order, time-scaled appearance of detailed elements and systems.</p>	Pfluger, Consultants,	Pfluger, Consultants, OWNER, CM	Revit 2024 (rvt)
<p><b>Conformed/ Handover Models</b>  Revit models will be “handed over” to the contractor after all addenda’s are issued.</p> <p>Uses: Models to be used by the contractor through construction. <b>FOR REFERENCE ONLY</b></p>	Pfluger, Consultants	OWNER, CM	Revit 2024 (rvt)
<p><b>Post Bid Model Updates During Construction</b> If needed by the contractor, the A/E will supply PR models after a PR has been issued, which alters major geometries of the building. <b>FOR REFERENCE ONLY</b></p>	Pfluger, Consultants	Pfluger, OWNER, CM	Revit 2024 (rvt)

## SPECIFIC MODELING REQUIREMENTS – BY DISCIPLINE

The following items will be used for model elements for each discipline. The level of detail for the elements listed below is dependent on the design phase. The table above defines the level of detail for each design phase. As the project progresses and it is discovered that non-basic model element parameters are needed for scheduling or reporting, then Pfluger asks that such parameters be identified in a timely manner to allow the design teams as much advance notice as possible. This requirement should be applied to all disciplines.

### ELEMENTS TO BE MODELED BY A/E TEAM

#### **Architectural**

- Exterior walls, doors, windows, railings, roofs, and roof soffits.
- Interior walls, including non-rated walls separating rooms, will be modeled.
- Stairs, ramps, and sloped floors will be modeled.
- Interior doors and windows will be modeled while the hardware is handled in Revit Schedules
- Elevator shaft clear space will be modeled to clear width, depth and height only from the basis of design vendors. Nominal elevator cab size and overrun shall be modeled, including hoist beam.
- Ceilings and soffits will be modeled.
- Light fixtures will be modeled to the overall height, width, and depth.
- Casework, including upper and lower cabinets as well as work surfaces will be modeled.
- Owner-furnished and contractor installed equipment may be modeled by vendor.
- Major equipment to be modeled to the extent that it needs to be for architectural coordination. For MEP coordination, will coordinate with equipment cut sheets.



- Rooms and other space objects will be utilized so that the Design Team may assign programmatic information to the model where appropriate.
- Furniture will be modeled for reference only.

#### **Structural**

- Miscellaneous metals within walls
- Cast-in-place concrete, including framed openings, slab depressions, and slab thickness identified in the construction documents, will be modeled. Slab edges and penetrations of structural systems will be accurately located in the model.
- Foundation elements (piers, pile caps, mat slabs, and footings), columns, and beams will be modeled as it will be built.
- Primary and secondary structural steel members will be modeled, including standard steel member sizes and braces.
- Floor decks will be modeled as the overall thickness of the slab.
- Elevator hoist beams, and intermediate rail support steel for the elevator will be modeled.
- Primary and Secondary framing element locations to be controlled by datum levels. Lowered framing regions will be controlled by Non-Story Levels.

#### **Civil (CAD)**

- All relevant site conditions.
- All essential existing (including upgrades) and new drainage piping for storm water and sanitary sewers.
- Domestic Fire and Water Systems
- All essential new utilities connections from the building to the existing or newly created utilities, and all existing above ground and underground utility conduits
- All essential roadways and parking lots or parking structures as necessary to produce accurate plans, profiles, and cross-sections.
- Retaining walls and stairs

### ELEMENTS THAT WILL NOT BE MODELED BY A/E TEAM

#### **Architectural**

- In all walls, studs (including king studs) will not be modeled.
- Door and window hardware will not be modeled. It will be handled with schedules in Revit.
- Elevator cab finishes, equipment, etc. will not be modeled.
- Fixed furnishings will not be modeled. \*(further clarification needed on equipment and furnishings)
- Wall finishes including paint, wall coverings, tile, wall base and trim will not be modeled. It will be handled with schedules in Revit.
- Floor finishes including carpet, tile, stains, etc. will not be modeled. It will be handled with schedules in Revit.

#### **Mechanical**

- Dimensional location of ductwork and piping may not be included in the construction documents.

#### **Electrical**

- Typical circuit wiring runs will not be modeled.

#### **Plumbing**

- Fittings and connections will not be modeled.

#### **Structural**





- Ribs in metal decks will not be modeled.
- Chamfers at corners will not be modeled.
- Concrete reinforcement and embeds will not be modeled.
- Bolts, clip angles, gusset plates, etc. will not be modeled.
- Miscellaneous metals such as elevator rails, kickers, above ceilings, and equipment supports will not be modeled.

#### **Civil (CAD)**

- Crane base structures
- Site furnishings
- Site entry structures and signage
- Thermal utilities systems
- Underground power and communication duct banks
- Pole mounted fixtures / streetlamps and concrete bases
- Security cameras not internal to the buildings
- Free standing cooling towers, diesel generators, storage tanks, transformers
- Landscaping vegetation

## MODELING GUIDELINES

#### **Origin Point:**

Numbered grids run South to North. Lettered grids run East to West. Grids A and 1 are aligned to Revit's X and Y axis, ie they are 0'-0" from each axis. Level 1 is 100' up from Revit's origin. All consultant models are to link "Origin to Origin" with the architectural model.

**Accuracy:** Models will include all appropriate dimensioning as needed to convey design intent.

**Unit of Measure & Scale:** The Imperial system (feet and inches) will be used. All 3D Model elements will be correct in scale and units unless specifically noted otherwise.

**Model Maintenance:** It is the duty of the BIM manager of each respective firm to keep Revit warnings to a minimum and resolve frequently. Information from other applications may be linked into the model if necessary, however it is emphasized to keep linked files to a minimum.

**CAD Layering Guidelines:** Any CAD based drawing files that may be used during the design process should follow the US National CAD Standards.

## SECTION E: COLLABORATION PROCEDURES

### DOCUMENT MANAGEMENT

1. File naming structure: the model file names will be formatted as follows:

Project Number\_DISCIPLINE\_Model Division.file extension

EXAMPLE: 24-013\_ARCH\_Hall\_SD.rvt

Note: Model division may not be used. If a model does need to separate for whatever reason, it should be discussed with all AEC parties prior to ensure proper coordination.

The following four alpha characters shall be utilized as the DISCIPLINE:

Architectural	<b>ARCH</b>	Civil	<b>CIVL</b>	Structural	<b>STRU</b>
Mechanical	<b>MECH</b>	Electrical	<b>ELEC</b>	Plumbing	<b>PLUM</b>
Fire Protection	<b>FIRE</b>	Construction	<b>CNST</b>	Estimate	<b>COST</b>
Coordination	<b>CORD</b>	Food Service	<b>FOOD</b>	Energy	<b>ENRG</b>
Communication	<b>COMM</b>				

### A/E FEDERATED PROJECT MODELS

Listed below are the various federated project models. These will be revised as the project progresses.

Discipline	Model Name	Authoring Company	Software
Architecture	24-013_ARCH_Existing.rvt	Pfluger	Revit 2024
Architecture	24-013_ARCH.rvt	Pfluger	Revit 2024
Structure	24-013_STRU_Existing.rvt	IES	Revit 2024
Structure	24-013_STRU.rvt	IES	Revit 2024
MEP	24-013_MEP.rvt	Cleary Zimmerman	Revit 2024
Communication	24-013_COMM.rvt	Combs Consulting	Revit 2024
Civil	24-013_CIVL.dwg	Gessner	AutoCAD 2024
Landscape	24-013_LAND.rvt	Coleman & Associates	Revit 2024

### FILE SHARING AND TRANSFER

Each team will be working on the machines of the organization.

- Files are housed on Autodesk Construction Cloud location. Files will be published on a regular weekly basis and supplemented by additional publishing as necessary. All team members should receive notification of the uploading of new models.



**BIM FOR FM DELIVERY SCHEDULE OF INFORMATION EXCHANGE FOR SUBMISSION AND APPROVAL**

Information Exchange	File Sender	File Receiver	One-Time or Frequency	Due Date or Start Date	Native File Type
Design Models	Pfluger, Consultants	Pfluger, OWNER, CM	At each milestone	SD through CD	.rvt
Conformed Model	Pfluger, Consultants	Pfluger, OWNER, CM	One time, TBD by date of final Addendum	One time	Authoring files (ex: RVT, DWG, etc.)
Post Bid Design Model Updates	Pfluger, Consultants	Pfluger, OWNER, CM	As needed for PR issues	Within a week of document publication	Authoring files (ex: RVT, DWG etc.)

**BIM MEETINGS**

Meeting Type	Project Stage	Frequency	Participants	Location
BIM Requirements Kick-Off	Early Project	One Time (TBD)	Pfluger, Consultants, Owner, CM	Teams Call
Clash Detection Coordination Reviews	DD-CD's	Every deliverable (TBD)	Pfluger, Consultants, Owner, CM	Teams Call
BIM Work session To coordinate on changes to the BIM EP, etc.	All	Set by FDI in coordination with team (TBD)	Pfluger, Consultants, Owner, CM	Teams Call

## SECTION F: PROCESS FOR DATA VERIFICATION – QA/QC

### OVERALL STRATEGY FOR QUALITY CONTROL

1. Architecture models shall be modeled to convey the design intent. Logical modeling means and best practices will be utilized throughout the process. This means that a wall will be a wall, casework will be casework. Objects will be 3-dimensional, 2D details will be overlaid to ensure match with modeled geometry.
2. Architectural models will be modeled with the intent to be taken-off.
3. Architecture models will be modeled to the tolerance of 1/8". Dimension strings will be honest and un-edited.



## SECTION G: TECHNOLOGICAL INFRASTRUCTURE NEEDS

### SOFTWARE

1. Revit 2024 with patches – Pfluger and their consultants will create and maintain their respective models in Revit 2024 with patches and updates from Autodesk. Pfluger will alert the team to when and which patch or update will be installed.
2. Autodesk Construction Cloud Design Coordination – CM will create and maintain construction models in Autodesk Construction Cloud.

### PROJECT DELIVERABLES

Submittal Item	Stage	Approximate Due Date	Format
Design Models – Architectural	At each milestone and issuance of post bid document	Varies	.rvt
Conformed Model	After last Addendum	TBD	.rvt
Post Bid Design Model Updates	After determined PR issue	TBD	.rvt

**EXHIBIT C**  
**FEDERAL FUNDING TERMS AND CONDITIONS**

U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL FISCAL RECOVERY  
FUND AWARD TERMS AND CONDITIONS

This Contract involves the use of funds from a federal government grant or cooperative agreement—or funds from a subcontract at any tier relating to a federal government grant or cooperative agreement. As such, the compliance of the following terms and conditions is required by the U.S. Department of the Treasury for the Project and thus shall apply to Contractor and its obligations under the Agreement for the Project between the Owner and the Contractor and are attached to the attached Agreement and made a part thereof. The terms “Contractor” as used in this **Exhibit C** means the **Architect/Engineer**.

During the performance of the attached Agreement, Contractor agrees as follows:

1. Use of Funds.

- a. Contractor understands and agrees that the funds disbursed under this award to Owner may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. Contractor will determine prior to engaging in this project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of Contractor’s obligations under the attached Agreement.

2. Period of Performance.

The period of performance for this award to Owner begins on the date hereof and ends on December 31, 2026. As set forth in Treasury’s implementing regulations, Owner may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.

3. Reporting.

Contractor agrees to comply with any reporting obligations established by Treasury as they relate to this award to Owner.

4. Maintenance of and Access to Records.

- a. Contractor shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. Owner, the Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Contractor in order to conduct audits or other investigations.

c. Records shall be maintained by Contractor for a period of five (5) years after all funds to Owner pursuant to the award have been expended or returned to Treasury, whichever is later.

5. Pre-award Costs.

Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award to Owner.

6. Administrative Costs.

Owner may use funds provided under this award to Owner to cover both direct and indirect costs. Cost Sharing. Cost sharing or matching funds are not required to be provided by Owner.

7. Conflicts of Interest.

Contractor understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under the award to Owner. Contractor and its subcontractors must disclose in writing to Owner and Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. 3

8. Compliance with Applicable Law and Regulations.

a. Contractor agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Contractor also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Contractor shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award to Owner.

b. Federal regulations applicable to this award to Owner and to the attached Agreement between Contractor and Owner, include, without limitation, the following:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award to Owner and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award to Owner and to the attached Agreement between Contractor and Owner.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in

2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

- v. Contractor Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
- ix. Generally applicable federal environmental laws and regulations.

c. Statutes and regulations prohibiting discrimination applicable to the award to Owner and to the attached Agreement between Contractor and Owner include, without limitation, the following:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

#### 9. Remedial Actions.

In the event of Contractor's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements,



Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.

10. Hatch Act.

Contractor agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

11. False Statements.

Contractor understands that making false statements or claims in connection with this award to Owner is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

12. Publications.

Any publications produced with funds from this award to Owner must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Owner] by the U.S. Department of the Treasury.”

13. Debts Owed the Federal Government.

a. Any funds paid to Contractor (1) in excess of the amount to which Contractor is finally determined to be authorized to retain under the terms of this award to Owner; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Contractor shall constitute a debt of Contractor to the federal government.

b. Any debts determined to be owed the federal government by Contractor must be paid promptly by Contractor. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Contractor knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

14. Disclaimer.

a. The United States expressly disclaims any and all responsibility or liability to Contractor or third persons for the actions of Contractor or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award made to Owner or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award to Owner.

b. The acceptance of this award by Owner does not in any way establish an agency relationship between the United States and Contractor.

15. Protections for Whistleblowers.

a. In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

b. The list of persons and entities referenced in the paragraph above includes the following:

- i. A member of Congress or a representative of a committee of Congress;
- ii. An Inspector General;
- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for contract or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency;
- vi. A court or grand jury; or
- vii. A management official or other employee of Contractor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

16. Increasing Seat Belt Use in the United States.

Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor should adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles, and should encourage its subcontractors to adopt and enforce the same type of policies and programs.

17. Reducing Text Messaging While Driving.

Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor should encourage its employees, subcontractors, and contractors to adopt and enforce policies that ban text messaging while driving, and Contractor should establish workplace safety policies to decrease accidents caused by distracted drivers.

18. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER, AND OWNER'S REGENTS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL COSTS, LIABILITY, DAMAGE OR EXPENSE, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS, ARISING WITH RESPECT TO CONTRACTOR'S FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS EXHIBIT. THIS INDEMNIFICATION EXTENDS TO THE SUCCESSORS AND ASSIGNS OF CONTRACTOR, AND THIS INDEMNIFICATION SURVIVES THE EXPIRATION OR TERMINATION OF THE ATTACHED AGREEMENT BETWEEN OWNER AND CONTRACTOR.

19. Contractor acknowledges and agrees that the Agreement for the Project between Owner and Contractor can be terminated if the Contractor fails to comply with a requirement of this Exhibit.

20. In the event of a conflict between this Exhibit and the attached Agreement for the Project between Contractor and Owner, this Exhibit shall govern.