

AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND WALTER P. MOORE

This Services Agreement (“Agreement”) is entered into and effective upon final execution of this Agreement (the “Effective Date”), by and between The Texas A&M University System (hereafter referred to as “TAMUS”), an agency of the state of Texas, and Walter P. Moore (hereafter referred to as “PROVIDER”). TAMUS and PROVIDER are sometimes hereafter referred to as “Party” individually or “Parties” collectively).

TAMUS and PROVIDER hereby agree as follows:

1. SCOPE OF WORK

PROVIDER will work with TAMUS to provide building envelope services as outlined in RFQ01 FPC-16-002. The services included (but not limited to) in the scope of this Agreement are listed in Exhibit A, attached hereto.

2. TERM OF THE AGREEMENT

The initial term of this Agreement shall begin upon the final execution of the Agreement and will extend for three (3) years. This Agreement can be extended for two (2) additional one (1) year terms upon written agreement of both parties. Any extensions shall be at the same terms and conditions plus any approved changes to be determined by TAMUS and negotiated in writing with the PROVIDER.

3. PAYMENT TERMS

- A. The payment rate schedule is attached as Exhibit C and made a part of this Agreement.
- B. PROVIDER can invoice TAMUS monthly for the Scope of Work identified in Section 1. For reimbursement of travel expenses, PROVIDER’S invoice(s) must include supporting documents. Payment will be made to PROVIDER upon approval of such invoice by TAMUS. It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment law. Generally, payment will be made on the 30th day unless a discount has been arranged for more immediate payment.
- C. Business-related travel, lodging and/or meal expenses will be reimbursed by TAMUS according to the State of Texas rates, rules, and regulations (<http://www.window.state.tx.us//procurement/prog/stmp/>). PROVIDER is required to submit all travel receipts when requesting reimbursement. Under no circumstance will the PROVIDER be reimbursed for alcohol purchases. State travel rates are subject to change without notice and will be adjusted accordingly. Mileage rates will be calculated from point-to-point (PROVIDER’S place of business to job site) using the State of Texas mileage. Should the contract be renewed for an additional term, travel reimbursement amounts will be renegotiated at that time.

If the PROVIDER's place of business is located more than 60 miles from the job site, then a round trip charge of \$120 per trip will be allowed, regardless of the number of people in a vehicle(s) and of the time it takes to reach the site. This is to help offset personnel travel time which is NOT chargeable. If your PROVIDER's place of business is located closer than 60 miles to the job site, a round trip charge will not be allowed. Mileage reimbursement still applies in either case.

Overtime and holidays will be paid at straight time.

- D. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to TAMUS a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at;
<http://www2.tamus.edu/offices/budget-acct/acct/general/>.
- E. All invoices must reference the TAMUS purchase order number (which will be provided to PROVIDER within 15 days of the execution of this Agreement) and description of services provided to include but not limited to time, deliverables, and activities.
- F. Invoices are to be sent to e-Builder with the appropriate link provided in the purchase order. The invoices must include a summary of services performed. The invoices will be processed for payment upon approval by a TAMUS representative within Facilities Planning & Construction.

4. DEFAULT AND TERMINATION

- A. In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, TAMUS may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of TAMUS.
- B. TAMUS may terminate this Agreement at any time upon seven (7) days prior notice to PROVIDER.

5. PUBLIC INFORMATION

PROVIDER acknowledges that TAMUS is 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.

6. DISPUTE RESOLUTION

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 TAMUS and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to Billy Hamilton, Executive Vice Chancellor and Chief Financial Officer for TAMUS, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

7. HSP REQUIREMENTS

Subcontractor Selection Notification

Vendor shall provide a notice to **all** selected subcontractors/subconsultants (HUB's and Non-HUB's) of their selection as a subcontractor for this awarded contract. The notice must specify at a minimum the contracting agency's name (*The Texas A&M University System*) and its point of contact for the project, the project number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontractor will perform. A copy of the notice must also be sent to the point of contact provided in section 8R no later than ten (10) working days after the agreement is fully executed.

Progress Assessment Report

The HUB Subcontracting Plan (HSP) submitted with the RFQ response shall become a provision of this agreement. The vendor cannot change a subcontracting plan prior to its incorporation into the agreement. TAC 20.14 (5). Per the Texas Administrative Code Chapter 20.14, Texas A&M requires the following:

- The vendor must submit a HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report (PAR) to the Texas A&M University System (TAMUS) on a monthly basis per assigned project. The vendor will maintain business records documenting its compliance with the approved HSP and will submit a PAR to the TAMUS HUB Program no later than the 5th calendar day of the month until that specific project has been paid in full. TAC 20.14 (d). **All PAR's shall be sent via e-mail to the following address: SOProurement@tamus.edu . Payment requests submitted will not be processed without prior approval of the PAR.**
- Changes may not be made to the HSP without prior review and approval from the TAMUS HUB Program. The vendor shall submit to the TAMU HSP point of contact provided below a revised HSP for each subcontracting opportunity to be modified.

If the selected vendor subcontracts any of the work without complying with TAC 20.14 and without prior approval from the TAMUS HUB Program, the vendor will be deemed to have breached the agreement and be subject to any remedial actions provided by Texas Government Code, Chapter 2161, state law and TAC 20.14 (6). Texas A&M will report nonperformance relative to its agreement to Texas Procurement and Support Services in accordance with TAC 20.105, Subchapter F relating to the Vendor Performance and Debarment Program.

A copy of the PAR form can be found at the following link:

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

8. MISCELLANEOUS

- A. **Indemnification. PROVIDER agrees to indemnify and hold harmless TAMUS from any claim, damage, liability, expense or loss to the extent arising out of PROVIDER's negligent or willful errors or omissions under this Agreement.**
- B. **Independent Contractor.** PROVIDER is an independent contractor, and neither PROVIDER nor any employee of PROVIDER shall be deemed to be an agent or

employee of TAMUS. PROVIDER will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. PROVIDER shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of TAMUS relative to conduct on its premises.

- C. **Delinquent Child Support Obligations.** 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.”
- D. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER 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.
- E. **Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits TAMUS 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 PROVIDER is an individual, by signing this Agreement, PROVIDER certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
- F. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
- G. **State Auditor’s Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- H. **Entire Agreement.** This Agreement constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this Agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.
- I. **Severability.** If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest

benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

- J. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- K. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of TAMUS.
- L. **Force Majeure.** Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.
- M. **Loss of Funding.** Performance by TAMUS 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, TAMUS will issue written notice to PROVIDER and TAMUS may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of TAMUS.
- N. **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.
- O. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TAMUS shall be in the county in which the primary office of the chief executive officer of TAMUS is located, which is Brazos County, Texas.
- P. **Non-Waiver.** PROVIDER expressly acknowledges that TAMUS is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMUS of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- Q. **Insurance.** See Exhibit B.
- R. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. TAMUS and PROVIDER can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

TAMUS: The Texas A&M University System
301 Tarrow St., Suite 361
College Station, Texas 77840
Attention: Jeff Zimmermann
Phone: (979) 458-6410
Fax: (979) 458-6250


E-mail: jzimmermann@tamus.edu

PROVIDER:

Walter P. Moore
1301 McKinney, Suite 1100
Houston, TX 77010
Phone: (713) 630-7414
Email: rmiles@walterpmoore.com

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

The Texas A&M University System

By  _____
Jeff Zimmermann
Director, Procurement and Business Services

12/16/15
_____ Date

Walter P. Moore
By  _____
Rick Miles

12/15/15
_____ Date

EXHIBIT A – SCOPE

The required services shall consist of working under the direct supervision of TAMUS member's staff to provide design, and/or construction support on an "as needed" basis.

The selected PROVIDER will be responsible for providing all necessary equipment including but not limited to computer, software, digital camera and cell phone as part of their overhead and without separate reimbursement. Activities for which building envelope services MAY be requested include any or all of the following:

A. Design Phase

- Participate in the design phase on an as-needed basis, bringing to the owner's attention any potential design deficiencies that may be found at any point during the design phase.
- Review design documents, drawings and specifications for constructability.
- Provide plan checking for conformance to applicable code requirements as well as FM Global requirements. For each major review, provide report with diagrams showing alternatives for details deemed deficient. If PROVIDER attends a design review in which there are no, or very few envelope details, provide a report identifying the locations which may be problematic.
- Facilitate the preparation of supplemental conditions for the specifications.

B. Construction Phase

- Provide inspections and testing of the building envelope system:
 - Inspect the work of the construction contractor for progress, workmanship, and conformance with the approved contract documents and applicable codes and regulations for the building envelope system.
 - Coordinate and track all required envelope and special testing.
 - When work is found to be in non-conformance, document the deficiencies and promptly provide notification of the deficiencies to the TAMUS member and the GC
 - Verify that deficiencies have been corrected and/or approved by applicable party
 - For each site visit provide field report with photos on each pertinent building system under construction.
 - Bring proper personal protective equipment (safety harness, vest, etc) and tools (feeler gauge, wrenches, etc.) to accomplish inspection/testing.
 - Notify field inspector prior to visit if ladders, lifts, or other equipment will be needed to perform inspection/ testing. Directly notify general contractor the date and time of the inspection/testing so the subcontractors can make the site available.
 - Provide a field report of the onsite mock up review.
 - Perform infrared survey of the building envelope.
 - Perform fastener pull out tests.
 - Perform a building envelope condition assessment.

The A&M System reserves the right on each assignment to authorize all or any part of the above subject areas and/or work tasks as the A&M System deems necessary for the individual project. The scope to be performed will be set forth in each work authorization and be based on established unit rates and a proposal of units from the PROVIDER for the particular assignment. A purchase order will prescribe a scope of work with a not-to-exceed fee for each assignment.

Note: e-Builder is the project management software and the selected PROVIDER may be expected to fully utilize this program. There is no fee for licenses and training in College Station will be provided at no additional cost.

EXHIBIT B – INSURANCE

PROVIDER shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage 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 TAMUS. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to PROVIDER under this Agreement. PROVIDER shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. PROVIDER 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 TAMUS at least ten days before the effective date of the cancellation.

Insurance:

<u>Coverage</u>	<u>Limit</u>
A. <u>Worker’s Compensation</u>	
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

Workers’ Compensation policy must include under Item 3.A. on the information page of the workers’ compensation policy the state in which work is to be performed for TAMUS. Workers’ compensation insurance is required, and no “alternative” forms of insurance will be permitted

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;

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.

Additional Endorsements

The Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System as additional insured’s.

C. <u>Commercial General Liability</u>	
Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$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 PROVIDER's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement

D. Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of PROVIDER and its subcontractors 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, PROVIDER 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 three (2) years after the expiration of cancellation of this Agreement.

E. PROVIDER will deliver to TAMUS:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by PROVIDER 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.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System and The Texas A&M University System as Additional Insureds up to the actual liability limits of the policies maintained by PROVIDER. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System and The Texas A&M University System. No policy will be canceled without unconditional written notice to TAMUS at least ten days before the effective date of the cancellation. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to TAMUS ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section 11.

Any deductible or self-insured retention must be declared to and approved by TAMUS prior to the performance of any services by PROVIDER under this Agreement. PROVIDER is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following TAMUS contact in Section 8R.

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by TAMUS in writing, except as may be noted.

EXHIBIT C – BUILDING ENVELOPE RATES

Building Envelope Rates 2015-2018			Rate
Descriptions			Units
Personnel			Cost
1	Principal	hr.	\$220
2	Senior Architect	hr.	\$182
3	Architect	hr.	\$160
4	Senior Engineer	hr.	\$170
5	Engineer	hr.	\$148
6	Senior Project Manager	hr.	\$170
7	Project Manager	hr.	\$143
8	Asst Project Manager	hr.	\$125
9	Senior Designer/3D Specialist	hr.	\$100
10	Designer/Senior Cad Draftsman	hr.	\$92
11	Cad Draftsman	hr.	\$72
12	Technical Writer	hr.	\$57
13	Senior Field Specialist	hr.	\$98
14	Field Specialist	hr.	\$83
15	Testing Team Leader	hr.	\$120
16	Testing Technicians	hr.	\$93
17	Rigging Specialist	hr.	\$68
18	Skilled Labor	hr.	\$43
19	Common Laborer	hr.	\$40
20	Clerical	hr.	\$52
21	Senior Roofing/Waterproofing Professional, RRC	hr.	\$135
22	Roofing/Waterproofing Professional, RRO	hr.	\$95
23	Senior Technician - Roofing/Waterproofing	hr.	\$70
24	Technician -Roofing/Waterproofing	hr.	\$60
Equipment			
25	Tramex Meter	da.	\$62
26	Nuclear Moisture Meter	da.	\$62
27	Restricted Access Vehicle (ATV)	da.	\$85
28	34' Mobile Response Trailer	da.	\$195
29	8 x 10 Mobile Office	da.	\$90
30	20' Enclosed Trailer	da.	\$210
31	20' Low Boy Trailer	da.	\$190
32	Water Testing Tank/Trailer	da.	\$220
33	Manometer	da.	\$27
34	Vacuum Pump (Small)	da.	\$52
35	Vacuum Pump (large)	da.	\$97
36	2" Gas Powered Water Pump	da.	\$90
37	Electrical Booster Pump	da.	\$47
38	AAMA Wands	da.	\$92
39	75' Hoses	da.	\$12
40	Gas Powered Welding/Cutting Rig	da.	\$70
41	Generator	da.	\$115
42	Dehumidification Fans	da.	\$77
43	Rope Access Equipment	da.	\$105
44	Swing Stage	da.	\$285
45	Scaffolding	da.	\$185
46	Scissor lift	da.	\$210
47	Water Extraction Machine	da.	\$87

48	Roof Uplift Chamber	da.	\$1,300
49	Infrared Camera	da.	\$375
50	Bore Scope Camera	da.	\$230
51	Fastener Pull Out Tester	da.	\$75
52	Water Distribution Rack with gages	sf.	\$7
53	Vacuum Chamber	sf.	\$10
Travel			
54	Round Trip Charge	ea.	\$120
55	Mileage	mi.	State Rate
56	Meals	da.	State Rate
57	Hotel	da.	State Rate
Printing (Color or BW)			
58	8.5 x 11	ea.	\$0.20
59	8.5 x 14	ea.	\$0.25
60	11 x 17	ea.	\$0.30
61	18 x 24	ea.	\$0.90
62	24 x 36	ea.	\$1.80
63	30 x 42	ea.	\$3.50