

MASTER SERVICES AGREEMENT  
BY AND BETWEEN  
THE TEXAS A&M UNIVERSITY SYSTEM  
AND PGAL, INC.

This Master Services Agreement (“Agreement”) is entered into upon final execution (the “Effective Date”), by and between The Texas A&M University System (hereafter referred to as “A&M System”), an agency of the state of Texas, and PGAL, Inc., a corporation in the State of Texas (hereafter referred to as “PROVIDER”). A&M System and PROVIDER are sometimes hereafter referred to as “Party” individually or “Parties” collectively).

A&M System and PROVIDER hereby agree as follows:

**1. SCOPE OF WORK**

PROVIDER will work with A&M System and its universities and agencies (collectively referred to as “Members”) to provide facility programming services (“Services”) on an as needed basis. The services included (but not limited to) in the scope of this Agreement are listed in Exhibit A, attached hereto.

**2. PROVIDER OBLIGATIONS**

- A. PROVIDER will perform the Services in accordance with the standards of care, skill, and diligence expected of a qualified, competent and experienced professional in the provision of the type of services required under this Agreement.
- B. PROVIDER will obtain, maintain in effect, and pay the cost for all licenses, permits, or certifications that may be necessary for PROVIDER’s performance of this Agreement.
- C. PROVIDER represents and warrants that there are no obligations, commitments, third party rights, or impediments of any kind that will limit or prevent PROVIDER’s performance of the Services.

**3. TERM OF THE AGREEMENT**

The initial term of this Agreement shall begin upon final execution, and will extend through August 31, 2025. This Agreement can be extended for two (2) additional one-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 A&M System and negotiated in writing with the PROVIDER.

**4. PAYMENT TERMS**

- A. A&M System shall not pay any costs or fees as a direct result of this Agreement. For the services rendered under this Agreement, A&M System or Member shall pay PROVIDER for the scope and fees negotiated at the time a specific project is assigned, to include reimbursables.
- B. PROVIDER will submit invoices to A&M System or Member for the amounts due consistent with the payment schedule as negotiated per project. Each invoice must reference the A&M System or Member purchase order number and include a description of services provided to include but not limited to time, deliverables, and activities along with documentation that A&M System or Member may reasonably request to support the invoice amount. The A&M System or Member will make payment on a properly prepared and submitted invoice in accordance with Chapter 2251, Texas Government

Code (the "Texas Prompt Payment Act"), which shall govern remittance of payment and remedies for late payment and non-payment.

- C. For reasonable business-related travel, lodging and/or meal expenses validly incurred directly and solely in support of the Services and approved by A&M System or Member in advance, PROVIDER will be reimbursed by A&M System or Member according to the State of Texas rates, rules, and regulations (<https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>). When requesting such reimbursement, PROVIDER will submit to A&M System or Member receipts, invoices and other documentation as required by A&M System or Member. Under no circumstances will 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 Agreement be renewed for an additional term, travel reimbursement amounts will be renegotiated at that time.
- D. All payments will be made by electronic direct deposit. PROVIDER is required to complete and submit to A&M System a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at; <https://www.tamus.edu/business/budgets-and-accounting/accounting/general/>.

## 5. DEFAULT AND TERMINATION

- A. In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, A&M System 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 A&M System.
- B. A&M System may terminate this Agreement at any time upon thirty (30) days prior notice to PROVIDER.
- C. Termination of this Agreement for either of the reasons stated above shall not terminate any Member specific agreement or purchase order. Refer to Section 10.O for survivability of terms beyond termination of this Agreement.

## 6. OWNERSHIP OF CREATED WORKS

PROVIDER irrevocably assigns, transfers and conveys to A&M System, for no additional consideration, all of PROVIDER's ownership, rights, title and interest in and to all works prepared by PROVIDER under this Agreement ("Deliverables"), including, without limitation, all copyrights, patents, trademarks, trade secrets and other intellectual property rights and all other rights that may hereafter be vested relating to the Deliverables under law. PROVIDER certifies that all Deliverables will be original, or that PROVIDER will have obtained all rights necessary for the ownership and unrestricted use of the Deliverables by A&M System. PROVIDER shall secure for A&M System all consents, releases, and contracts and perform other reasonable acts as A&M System may deem necessary to secure and evidence A&M System's rights in any Deliverable.

## 7. CONFIDENTIALITY

- A. The Parties anticipate that under this Agreement it may be necessary for a Party (the "Disclosing Party") to transfer information of a confidential nature ("Confidential Information") to the other Party (the "Receiving Party"). The Disclosing Party shall clearly identify Confidential Information at the time of disclosure by (a) appropriate stamp or markings on the document exchanged, or (b) written notice, with attached listings of all

material, copies of all documents, and complete summaries of all oral disclosures (under prior assertion of the confidential nature of the same) to which each notice relates, delivered within thirty (30) days of the disclosure to the other party. "Confidential Information" does not include information that: (a) is or becomes publicly known or available other than as a result of a breach of this Agreement by the Receiving Party; (b) was already in the possession of the Receiving Party as the result of disclosure by an individual or entity that was not then obligated to keep that information confidential; (c) the Disclosing Party had disclosed or discloses to an individual or entity without confidentiality restrictions; or (d) the Receiving Party had developed or develops independently before or after the Disclosing Party discloses equivalent information to the Receiving Party.

- B. The Receiving Party shall use the same reasonable efforts to protect the Disclosing Party's Confidential Information as it uses to protect its own confidential information of a similar nature. The Receiving Party may only disclose Confidential Information to its personnel having a need to know the Confidential Information to fulfill the Receiving Party's obligations under this Agreement. The Receiving Party may not reproduce, disclose, or use Confidential Information except in performing its obligations under this Agreement. If the Receiving Party is legally required to disclose Confidential Information, the Receiving Party shall, to the extent allowed by law, promptly give the Disclosing Party written notice of the requirement so as to provide the Disclosing Party a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If the Receiving Party complies with the terms of this Section, disclosure of that portion of the Confidential Information, which the Receiving Party is legally required to disclose, will not constitute a breach of this Agreement.
- C. The Receiving Party shall, upon request of the Disclosing Party, promptly return or destroy all materials embodying Confidential Information other than materials in electronic backup systems or otherwise not reasonably capable of being readily located and segregated without undue burden or expense, except that the Receiving Party may securely retain one (1) copy in its files solely for record purposes. The Receiving Party's obligations as to Confidential Information will survive the termination or expiration of this Agreement for a period of three (3) years.

## 8. INSURANCE

Insurance requirements as stated within Exhibit B, attached hereto.

## 9. INDEMNIFICATION

PROVIDER shall indemnify and hold harmless A&M System, and their regents, employees and agents (collectively, the "A&M System Indemnitees") from and against any third-party claims, damages, liabilities, expense or loss asserted against A&M System Indemnities arising out of any acts or omissions of PROVIDER or its employees or agents pertaining to the activities and obligations under this Agreement, except to the extent such liability, loss or damage arises from an A&M System Indemnitee's gross negligence or willful misconduct.

## 10. MISCELLANEOUS

- A. **Authority to Contract, Representations & Warranties.** If PROVIDER is a business entity, PROVIDER warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to

execute and deliver this Agreement, and the individual executing this Agreement on behalf of PROVIDER has been duly authorized to act for and bind PROVIDER.

- B. **Use of Name.** Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading. The Parties will mutually agree in advance upon any public announcements, or communications to the media regarding this Agreement or the services to be provided pursuant to this Agreement.
- C. **Public Information.** PROVIDER acknowledges that A&M System 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, as well as any other disclosure of information required by applicable Texas law. Upon A&M System's written request, PROVIDER will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M System to A&M System in a non-proprietary format acceptable to A&M System that is accessible by the public. PROVIDER acknowledges that A&M System 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. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and PROVIDER agrees that this Agreement can be terminated if PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.
- D. **Dispute Resolution.** To the extent that Chapter 2260, Texas Government Code is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by A&M System 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 the University Contracts Officer of A&M System, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim. This provision and nothing in this Agreement waives A&M System's sovereign immunity to suit or liability, and A&M System has not waived its right to seek redress in the courts.
- E. **Copyrights & Patents [If Applicable].** PROVIDER shall not knowingly provide to the A&M System any materials or services that infringe any intellectual property, privacy, or other right of any party. If PROVIDER becomes aware of any possible infringement claims, PROVIDER shall immediately notify the A&M System in writing as to any judicial, administrative, or other action, suit, claim, investigation, or proceeding (each a "Proceeding") alleging that any such material or service infringes any intellectual property, privacy, or other right. PROVIDER shall indemnify and defend The Texas A&M University System, and their regents, officers, employees, representatives, and agents against all: (a) amounts awarded in, or paid in settlement of, that Proceeding, including any interest, and (b) out-of-pocket expenses incurred in defending that Proceeding or in any related investigation or negotiation, including court costs, witness fees, and attorneys' and other professionals' fees and disbursements arising out of that Proceeding. If any such service or material becomes, or in PROVIDER's reasonable opinion is likely to become, the subject of an infringement claim, PROVIDER may, at its option and expense, either (1) procure for the A&M System the right to continue exercising the rights licensed to the A&M System under this Agreement, or (b) replace or modify the service or material

so that it becomes non-infringing and remains functionally equivalent. If neither of the foregoing options are, in PROVIDER's reasonable opinion, commercially reasonable, PROVIDER may terminate this Agreement and promptly refund to the A&M System a prorated portion of any applicable prepaid Fees. This paragraph is not subject to Section 7 (Limitation of Liability) of the Agreement. The foregoing states the entire liability of PROVIDER and the sole and exclusive remedy for the A&M System with respect to any third-party claim of infringement or misappropriation of intellectual property rights.

- F. **Independent Contractor.** Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by PROVIDER's service to A&M System. Except as specifically required under the terms of this Agreement, PROVIDER (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of A&M System or A&M System. As an independent contractor, PROVIDER is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance. PROVIDER and its employees shall observe and abide by all applicable A&M System policies, regulations, rules and procedures, including those applicable to conduct on its premises.
- G. **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. Under Section 231.006, *Texas Family Code*, PROVIDER certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
- H. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 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.
- I. **Prior Employment.** PROVIDER acknowledges that Section 2252.901, *Texas Government Code*, prohibits A&M System from using state appropriated funds to enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with individual who has been previously employed by A&M System during the twelve (12) month period immediately prior to the effective date of the Agreement. If PROVIDER is an individual, by signing this Agreement, PROVIDER represents and warrants that it is not a former or retired employee of A&M System that was employed by A&M System during the twelve (12) month period immediately prior to the effective date of the Agreement.
- J. **Not Eligible for Rehire.** PROVIDER is responsible for ensuring that its employees involved in any work being performed for A&M System under this Agreement have not been designated as "Not Eligible for Rehire" as defined in System policy 32.02, *Discipline and Dismissal of Employees*, Section 4 ("NEFR Employee"). In the event A&M System becomes aware that PROVIDER has a NEFR Employee involved in any work being performed under this Agreement, A&M System will have the sole right to demand removal of such NEFR

Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by A&M System.

- K. **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.
- L. **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.
- M. **Entire Agreement.** This Agreement constitutes the entire and only agreement between the Parties hereto and supersedes any prior understanding, written or oral agreements between the Parties, or "side deals" which are not described in this Agreement. This Agreement may be amended only by a subsequent written agreement signed by authorized representatives of both parties.
- N. **Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.
- O. **Survivability.** Any provision of this Agreement that may reasonably be interpreted as being intended by the Parties to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.

The PROVIDERS's duties under this Agreement, Member specific agreement and/or purchase order, which impose an obligation after expiration or termination of this Agreement, will survive unless otherwise stated within the Member specific agreement and/or purchase order.

- P. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- Q. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of A&M System.
- R. **HUB Subcontracting Plan.** It is the policy of the state of Texas and A&M System to encourage the use of Historically Underutilized Businesses ("HUB") in our contracts, purchasing transactions and through subcontracting opportunities. The goal of the HUB program is to promote equal access and equal opportunity to HUB vendors in A&M System contracting and purchasing.

PROVIDER will use good faith efforts to subcontract work performed under this Agreement in accordance with the HUB subcontracting plan attached hereto as Exhibit C ("HSP"). Except as specifically provided in the HSP, PROVIDER will not subcontract any of its duties or obligations under this Agreement, in whole or in part. Furthermore,

PROVIDER will comply with all of its duties and obligations under Section 20.285 of the Texas Administrative Code.

If PROVIDER is awarded a project in connection with this Agreement, PROVIDER may be required to complete a separate, project-specific HSP form which identifies the subcontracting opportunities anticipated for the scope of work defined in that project and subcontractors anticipated to perform each subcontracting opportunity. PROVIDER shall contact the applicable Member HUB Program office for more information on the requirements for that specific project.

- S. **Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party's reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).
- T. **Loss of Funding.** Performance by A&M System 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, A&M System will issue written notice to PROVIDER and A&M System may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of A&M System. In the event of a termination or cancellation under this Section, A&M System will not be liable to PROVIDER for any damages that are caused or associated with such termination or cancellation.
- U. **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.
- V. **Venue.** Pursuant to Section 85.18(b), *Texas Education Code*, mandatory venue for all legal proceedings against the A&M System is to be in the county in which the principal office of A&M System's governing officer is located. At the date of this Agreement, such county is Brazos County, Texas.
- W. **Non-Waiver.** A&M System is an agency of the state of Texas and under the Constitution and the laws of the state of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has authority as is granted to it under the Constitution and the laws of the state of Texas. PROVIDER expressly acknowledges that A&M System is an agency of the state of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by A&M System of its right to claim such exemptions, remedies, privileges, and immunities as may be provided by law, including the sovereign immunity of A&M System.
- X. **Conflict of Interest.** PROVIDER certifies, to the best of their knowledge and belief, that no member of the A&M System Board of Regents, nor any employee of A&M System, has

a direct or indirect financial interest in PROVIDER or in the transaction that is the subject of the Agreement.

- Y. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Chapter 2271, *Texas Government Code*, is applicable to this Agreement, PROVIDER certifies that (a) it does not currently boycott Israel, and (b) it will not boycott Israel during the Term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- Z. **Certification Regarding Business with Certain Countries and Organizations.** PROVIDER represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, *Texas Government Code*. PROVIDER acknowledges this Agreement may be terminated immediately if this certification is inaccurate.
- AA. **Records Retention.** PROVIDER will preserve all contracting information, as defined under *Texas Government Code*, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven years after the conclusion of the Agreement.
- BB. **Verification Regarding Discrimination Against Firearm Entities and Trade Associations.** To the extent that Chapter 2274, *Texas Government Code*, is applicable to this Agreement, PROVIDER verifies that (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- CC. **Verification Regarding Boycotting Energy Companies.** To the extent that Chapter 2274, *Texas Government Code*, is applicable to this Agreement, PROVIDER verifies that (1) it does not boycott energy companies, and (2) it will not boycott energy companies during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
- DD. **Compliance with Laws.** PROVIDER shall comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement.
- EE. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed given: (a) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (b) the next business day after it is sent by overnight carrier, (c) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (d) on the date of delivery if delivered personally. A&M System 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:

A&M System:                   The Texas A&M University System  
301 Tarrow St., Suite 273  
College Station, Texas 77840  
Attention: Jeff Zimmermann  
Phone: (979) 458-6410  
E-mail: [zimmermann@tamus.edu](mailto:zimmermann@tamus.edu)

PROVIDER:                   PGAL, Inc.  
14135 Midway Road, Suite G-200  
Addison, TX 75001

Attention: Tim Konganda  
Phone: 9672-871-2225  
Email: [tkonganda@pgal.com](mailto:tkonganda@pgal.com)

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

**The Texas A&M University System**

DocuSigned by:  
*Jeff Zimmermann*  
BY \_\_\_\_\_  
E2BE2924E69547F...  
Jeff Zimmermann  
Executive Director, Procurement

11/8/2023  
\_\_\_\_\_  
Date

**PGAL, Inc.**

DocuSigned by:  
*Tim Konganda*  
BY \_\_\_\_\_  
151D5D801AED432...  
Tim Konganda  
Principal

11/7/2023  
\_\_\_\_\_  
Date

## **Exhibit A – Scope of Work**

Notwithstanding any other provision in this Agreement, PROVIDER’s performance of the Services will (1) conform to the specifications and requirements of Request for Qualifications No. RFQ01 FPC-23-167 (the “RFQ”), which is incorporated by reference for all purposes, and (2) to the extent consistent with the RFQ, will conform with PROVIDER’s proposal, dated August 17, 2023 (“PROVIDER’s Proposal”) which was submitted by PROVIDER in response to the RFP and is incorporated by reference for all purposes. To the extent that the RFQ or PROVIDER’s Proposal conflict with the terms of this Agreement, the terms of this Agreement will control.

### **Services for Facility Programming**

Services will include the planning and development of a comprehensive Programs of Requirements (POR) or Statement of Work (SOW) for certain construction projects for A&M System Members as assigned and authorized. In general, the programs will capture and record the requirements for each particular project, clearly define what scope is included in the project, be a basis for sign-off agreement on scope/cost/schedule from leadership of the A&M System Member, and present the information needed by the design architects and engineers in a concise and easily understood format.

### **Program of Requirements (POR) or Statement of Work (SOW)**

A typical POR or SOW could be required to address subjects to include but not be limited to the following, as applicable to a particular project and recommended by the A&M System Office of Facilities Planning and Construction (a POR or SOW template is available for use as a guide from FPC):

#### **Project Description**

- User justification – describe the need for the new facility/renovation/infrastructure
- System Strategic Imperative – list imperative and how the project supports
- Campus Master Plan Implementation – describe how the project complies with and supports the implementation goals of the specific member campus master plan
- Project narrative – describe scope
- Goals and Objectives
- Enrollment, faculty, and staff projections for this project
- THECB space projections, campus space utilization score

#### **General Requirements**

- Project team members and roles, contact info
- Codes and Regulations and other facility or certification requirements unique to the project
- Target or maximum project budget
  - Total Project Cost (TPC) includes the total AACC and the indirect costs
  - Target the total AACC at 75% of the max project budget (indirect costs generally range from 20% to 30% of the TPC)
  - Construction estimate includes a base bid (90%) and alternates for 10% of the total AACC
  - Construction estimate escalated to mid-point of construction
  - Estimate for movable furnishings based on room data sheets
  - Estimate for movable equipment based on equipment matrix and cut sheets
- Project schedule, as coordinated with A&M System FP&C
- Aspects used to determine success of the project
- Barriers that challenge the success of the project
- Coordination with member institution master plan priorities
- Coordination with member institution support departments (i.e., Technology, Utilities providers, Security, etc.) – identify requirements, roles and responsibilities
- Coordination with member institution CEO/President and CFO – identify CEO/CFO goals

- Notate items that are *not* typically included in the project or budget (for example, computers, phones, moving/relocation expenses, desktop supplies and equipment, maintenance and custodial services, etc.)
- Any sole source products required by member institution with approval documentation from the A&M System for each (sole source pricing should be reflected in the cost estimate)
- Signature page for the project
- Memorandums of understanding, agreements, easements, land ownership transfers, etc. required

#### Texas Higher Education Coordinating Board (THECB) Requirements

- Project's achievement of any of the THECB goals (60x30 or latest version)
- Predominant building use classification
- Required building efficiency based on primary use
- NASF and E&G SF by room
- NASF and GSF by floor, by building, and total
- Room code for each space

#### Site Development Requirements

- Site selection studies
- Availability, capacity, and quality of existing site utilities
- On-site and off-site utilities coordination – identify source, contact information, points of connection, etc.
- Drainage, erosion control, and storm water detention requirements and recommendations
- Adjacent uses and buildings
- Archeological survey
- Noise Abatement
- Hazardous materials survey
- Acquisition of property requirement and agreement(s)
- Demolition of existing structures
- Natural features or trees to remain
- Campus landscape requirements
- Site security considerations
- Phasing of development activities

#### Building Requirements

- Basis of design assumptions for costing: structure material, mechanical & electrical loads, and other system requirements
- Life Cycle criteria per the A&M System FP&C guidelines
- Building maintenance plan to include estimate of preventive maintenance, custodial, & grounds services
- Rainwater, condensate, and gray water collection and reuse requirements and recommendations
- Alternative energy requirements and recommendations
- Sustainability requirements
- Hazardous materials survey (if existing building)
- Re-purposing of existing facilities (if applicable)
- Deferred maintenance evaluation (if renovation/building addition)
- Space requests and needs
- Functional relationships of departments and spaces
- Space conversion opportunities
- Room by room requirements documented in the *Room Data Sheets*

- Matrix of existing and/or new Moveable Equipment, including anticipated future equipment needs, procurement responsibilities (procurement, installation, in/out of project budget) with cut sheets
- Matrix of existing and/or new Moveable Furnishings

#### Room Data Sheets

- Space use
- Test fits to verify sizing accommodates FF&E, occupancy, and functionality
- Level of finishes for cost assumptions
- Moveable furnishings
- Moveable equipment
- Casework
- Fixtures
- Audio-Visual equipment and infrastructure requirements
- Security equipment and requirements
- Performance requirements of all systems and equipment
- Cut sheets for equipment
- Special sound or vibration requirements beyond the Facility Design Guidelines

#### Building Configuration and Massing

- Space schematics and flow charts
- Departmental interaction diagrams
- Room-by-room interaction plans
- Horizontal and vertical block stacking diagrams with relative spatial requirements
- No schematic renderings
- No building footprint shaping (unless defined due to site constraints)

#### Facility Programming Process

The tasks to be performed in the process of developing the specific deliverable could include, but not be limited to, such items as the following:

##### Task 1 – Discovery

- Kick-off meeting (at A&M System Member campus)
  - + Meet with leadership and appointed representatives of the A&M System Member and the A&M System to define project goals, set the direction for the project, discuss the “big picture” issues that will control program development, discuss the organization of facility or academic departments, and identify stakeholders who will participate in data gathering
  - + Develop a schedule for the programming process including associated user group interviews, workshops, and deliverable due date(s)
- Workshops(s)

Prepare and distribute project questionnaires to stakeholders. Receive and analyze completed questionnaires prior to holding stakeholder workshops. Conduct workshop(s) (multi-day if required) at the A&M System Member campus.

  - + Conduct detailed interviews with user groups and meet with on and off campus stakeholders
  - + Review current space use within academic departments
  - + Review possible changes in institution and departmental organization
  - + Discuss future scenarios for number of students, faculty and new programs
  - + Develop appropriate space standard sizes for offices, work stations, classrooms, etc. from the A&M System Member requirements
  - + Define ideal space requirements of each area and the functional relationship between all activities

- + Develop and present a summary of the workshop findings to the A&M System Member and A&M System representatives for preliminary test of reasonability

#### Task 2 – Program Development

- Develop Outline Program
  - + Analyze all of the space and adjacency requirements information for each space type
  - + Prepare exhibits that describe the programmatic needs of each space type
  - + Develop a series of relationship diagrams including stacking for multiple floors
  - + Organize all of the information to date into an outline program and issue it to designated representatives of the System Member and the A&M System
- Workshop(s) – Presentation of the Outline Program (at System Member Campus)
  - + Meet with user groups, stakeholders, and A&M System representatives to review the outline program
  - + As needed, facilitate gaming workshop to assist in prioritizing and adjusting the program elements to align with leadership objectives and project budget(s)
- Workshop(s) – Additional Detailed Programming
  - + Conduct follow-up interviews as needed with users and on and off campus stakeholders
  - + Document decisions regarding space allocations and adjacencies, other specific project requirements
  - + Review and document requirements to comply with campus standards
- Site development, technical requirements
  - + Demonstrate compliance with the Campus Master Plan, and document any variances
  - + Document a recommended site use and building configuration concept
  - + Develop blocking and stacking diagrams to illustrate the preferred space allocations
  - + Identify utility infrastructure connection points and capacity
  - + Identify associated project needs such as real estate ownership, site development, infrastructure improvements, MEP designs, structural engineering issues, etc.
  - + Incorporate guidelines, standards or specifications provided by the A&M System for items such as building systems, information technology, safety, code requirements, etc.
- Incorporate a suitable project schedule in coordination with the A&M System and the A&M System Member
- Cost estimate
  - + Develop a construction cost estimate including all identified requirements and agreed scope of the project for a complete and functional facility. Ensure the program narrative is correctly translated into the cost estimate and list all assumptions and exclusions. Demonstrate cost relative to benchmark examples.
  - + The cost estimate is considered as the Amount Available for Construction Contract (AACC) and shall be escalated to the appropriate year. The AACC estimate will include five (5) components:
    - Cost of work (summary, overall cost per GSF, and by division)
    - General Conditions (Bonds, Insurance, etc.)
    - Contractor fee
    - Contractor contingency (do not include design contingency)
    - Escalation to mid-point of construction
  - + If requested, present cost by:
    - Site Work & Infrastructure
    - Core & Shell
    - Buildout
  - + The total AACC will identify 90% of the scope as Priority 1 and 10% alternates identified during the programming process as Priority 2 scope.

- + The Total Project Cost (TPC) will include the total AACC plus the indirect costs, and will not exceed the target/max budget as defined by the campus/agency. A guideline is to keep the total AACC at 75% of the target/max project budget, as indirect costs generally range from 20% to 30% of the TPC.

Task 3 – Prepare and present POR or SOW

- + A 50% draft includes the program elements, specific directives from the user group, campus leadership, and specific site/infrastructure considerations identified by the programming team
- + A 75% draft includes the necessary updates based on comments from the previous draft, the cost estimate, and complete drafts of all sections within the POR or SOW
- + A 95% draft includes all final edits, appendices, attachments, and confirmed cost estimate used to create the final Total Project Cost worksheet(s)
- + Finalize the 95% draft program based on comments received
- + Issue the final version of the program to user coordinator and campus leadership for appropriate signatures

If a particular assignment requires the use of consultant firms, the PROVIDER shall identify the consultant(s) and provide for each firm the information requested in Section 3.3.1 – 3.3.2 of the RFQ. This information shall be provided as part of the specific proposal and for the particular assignment. In selecting and identifying a consultant firm(s), PROVIDER shall comply with the Historically Underutilized Business (HUB) process set forth in the RFQ (see Section 3.4).

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 a proposal from the PROVIDER for the particular assignment. For particular project assignments, a purchase order will establish the scope of work and a lump sum or not-to-exceed fee upon successful negotiations.

## Exhibit B – Insurance

Respondent shall obtain and maintain, for the duration of any resultant 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 A&M System. By requiring such minimum insurance, A&M System shall not be deemed or construed to have assessed the risk that may be applicable to Respondent under any resultant agreement. Respondent shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Respondent is not relieved of any liability or other obligations assumed pursuant to any resultant 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 A&M System at least ten days before the effective date of the cancellation.

### Coverage

### 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

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 A&M System. 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.

#### **C. Commercial General Liability**

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 Respondent's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of any resultant agreement.

#### **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.

**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 Respondent and its subcontractors under any resultant agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of any resultant agreement. If coverage is written on a claims-made basis, Respondent 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 (3) years after the expiration of cancellation of any resultant agreement.

**E. Respondent will deliver to A&M System:**

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 any resultant agreement and prior to the performance of any services by Respondent under any resultant 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 Respondent. 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 A&M System 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 A&M System ten (10) days prior to the effective date of cancellation, material change, or nonrenewal relating to any insurance policy required in this Section.

Any deductible or self-insured retention must be declared to and approved by A&M System prior to the performance of any services by Respondent under any resultant agreement. Respondent 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 any resultant agreement will be emailed to [soprocurement@tamus.edu](mailto:soprocurement@tamus.edu).

The insurance coverage required by any resultant agreement will be kept in force until all services have been fully performed and accepted by A&M System in writing, except as may be noted.

**EXHIBIT C - HUB Subcontracting Plan**