

AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND FACILITY PROGRAMMING LTD

This Master Services Agreement (hereafter referred to as "MSA") is entered into and effective September 1, 2021 (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 Facility Programming LTD, (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 the A&M System and its member universities and agencies (may be collectively referred to as "Members") to provide facility programming and Programs of Requirements ("POR") services on an as needed basis. The services included (but not limited to) in the scope of this MSA are listed in Exhibit A, attached hereto.

2. TERM OF THE AGREEMENT

The initial term of this MSA shall begin upon final execution and will extend through August 31, 2023. This MSA can be extended for two 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 A&M System and negotiated in writing with the Provider.

3. PAYMENT TERMS

- A. A&M System shall not pay any costs or fees as a direct result of this MSA. For services rendered as a result of this MSA, the A&M System or Member shall pay Provider for the services based on fees negotiated at the time a project(s) is assigned, to include reimbursables. These fees shall be stated within each Member specific project agreement and/or purchase order.
- B. Provider shall invoice A&M System or Member for amounts due consistent with the "Payment Schedule" as negotiated per project. 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. 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.
- D. All payments shall be made by electronic direct deposit. If not already setup, Provider is required to complete and submit to A&M System or Member a Vendor Direct Deposit Authorization form

prior to the first payment request. The A&M System Direct Deposit form can be accessed at; <https://www.tamus.edu/business/budgets-and-accounting/accounting/general/>.

- E. All invoices must reference the A&M System or Member purchase order number issued for a specific project and include the description of services provided as well as time, deliverables, and activities. Invoices will be processed for payment upon approval by the appropriate A&M System personnel.
- F. Invoices are to be sent according to the address specifically listed within the purchase order for each specific project.

4. DEFAULT AND TERMINATION

- A. For Cause: In the event of substantial failure by Provider to perform in accordance with the terms hereof, A&M System may terminate this MSA 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 by the end of the fifteen-day period), provided that said failure is through no fault of A&M System.
- B. For Convenience: A&M System may terminate this MSA at any time upon thirty (30) days prior notice to Provider.
- C. Termination of this MSA for either of the reasons stated above shall not terminate any Member specific agreement or purchase order. Refer to Section 8.M for survivability of terms beyond termination of this MSA.

5. PUBLIC INFORMATION

- A. 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 MSA, as well as any other disclosure of information required by applicable Texas law.
- B. Upon A&M System's written request, Provider will promptly provide specified contracting information exchanged or created under this MSA for or on behalf of A&M System.
- C. Provider acknowledges that A&M System may be required to post a copy of the fully executed MSA on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
- D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this MSA and the Provider agrees that the MSA can be terminated if the Provider knowingly or intentionally fails to comply with a requirement of that subchapter.

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 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 Billy Hamilton, Deputy Chancellor and Chief Financial Officer for A&M System, who shall examine Provider's claim and any counterclaim and negotiate with Provider in an effort to resolve the claim.

7. INSURANCE

Insurance requirements as stated within Exhibit B, attached hereto.

8. MISCELLANEOUS

- A. **Indemnification.** Provider agrees to indemnify and hold harmless A&M System from any claim, damage, liability, expense or loss to the extent arising out of Provider's negligent or willful errors or omissions under this MSA.
- 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 A&M System. A&M System 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 A&M System 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 MSA 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 A&M System 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 MSA, 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. **Not Eligible for Rehire.** Provider 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 MSA.
- G. **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.
- H. **State Auditor's Office.** Provider understands that acceptance of funds under this MSA 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.

- I. **Entire Agreement.** This MSA constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this MSA. This MSA may not be amended or otherwise altered except upon the written agreement of both parties.
- J. **Severability.** If any provisions of this MSA 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 MSA, as modified, enforceable, and the remainder of this MSA 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.
- K. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this MSA and shall not be used to construe it.
- L. **Non-Assignment.** Provider shall neither assign its rights nor delegate its duties under this MSA without the prior written consent of A&M System.
- M. **Survivability.** The Provider's duties under this MSA, Member specific agreement and/or purchase order, which impose an obligation after expiration or termination of this MSA, will survive unless otherwise stated within the Member specific agreement and/or purchase order.
- N. **HUB Subcontracting Plan.** If awarded a project as a result of this MSA, the Provider may be required by the applicable Member to complete a HUB Subcontracting Plan ("HSP") in full per the instructions below for that specific project.

- a. Complete Section 1
- b. Complete Section 2a through d.
- c. Complete Section 4
- d. Complete Method A or B as applicable depending on your response to questions in Section 2c-d. Below are the instructions for each Method;

Method A: Provide Method A (Attachment A) for each opportunity identified in Section 2b of the HSP and complete all sections. Section A-2 shall include all subconsultants selected for that opportunity, both HUBs and non-HUBs.

Method B: Provide Method B (Attachment B) for each opportunity identified in Section 2b. Reminder that all supporting documentation listed in Section B-3 shall be provided as part of this attachment. The following are additional items of note as part of the good faith effort required:

- The respondent shall provide potential HUB subcontractors reasonable time to respond to the respondent's notice. "Reasonable time to respond" in this context is no less than seven (7) working days from receipt of notice, unless circumstances require a different time period and it is approved by A&M System in writing.
- The respondent shall use the State of Texas Centralized Master Bidders List (CMBL), HUB Directory, internet resources, and/or other directories as identified by the State of Texas or the A&M System HUB Program Office when searching for HUB subcontractors. **A complete list of all State of Texas certified HUBs may be electronically accessed at;**
<https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>

- The respondent shall provide the notice described in this section to **three (3) or more** HUBs for **each** subcontracting opportunity as stated in Section B3a. The A&M System encourages respondents to seek and find a “Diverse Group” of Historically Underutilized Businesses in each category in which a subcontract of services is solicited.
 - The respondent shall provide notice to minority and women business trade organizations or development centers that assist in identifying HUBs by disseminating opportunities to their membership/participants. A list of possible organizations/centers can be found at the following site;
<https://comptroller.texas.gov/purchasing/vendor/hub/resources.php>
 - The respondent shall negotiate in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder.
 - Provide written justification of the selection process if a non-HUB subcontractor is selected in Section B-4c.
- O. **Force Majeure.** Neither party will be in breach of its obligations under this Agreement or incur any liability to the other party for any losses or damages of any nature whatsoever incurred or suffered by that other party if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure event (as defined below), except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure event had not occurred. “Force Majeure event” is defined as: 1) acts of God; 2) war; 3) act(s) of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strike(s); 9) loss or shortage of transportation facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 11) interruptions by government or court orders (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction; 13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemic(s), pandemic(s), or other national, state, or regional emergency(ies); and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the party whose performance is affected and which by the exercise of all reasonable due diligence, such party is unable to overcome. Such excuse from performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform its obligation(s). Written notice of a party’s failure or delay in performance due to Force Majeure must be given within a reasonable time after its occurrence and must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). For the avoidance of doubt, the COVID-19 pandemic and any governmental changes or closures related thereto shall be deemed Force Majeure events, even to the extent reasonably foreseeable by either party as of the effective date of this Agreement.
- P. **Loss of Funding.** Performance by a Member under this MSA and Member specific agreement or purchase order 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, the impacted Member may issue written notice to Provider and Member may terminate their Member specific agreement or purchase order without further duty or obligation hereunder. Provider acknowledges that appropriation of funds is beyond the control of A&M System and its Members.

- Q. **Governing Law.** The validity of this MSA and all matters pertaining to this MSA, 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.
- R. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against A&M System shall be in the county in which the primary office of the chief executive officer of A&M System is located, which is Brazos County, Texas.
- S. **Non-Waiver.** Provider expressly acknowledges that A&M System is an agency of the State of Texas and nothing in this MSA will be construed as a waiver or relinquishment by A&M System of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- T. **Conflict of Interest.** By executing this MSA, Provider and each person signing on behalf of Provider certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this MSA, or in the services to which this MSA relates, or in any of the profits, real or potential, thereof.
- U. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Texas Government Code, Chapter 2271 applies to this MSA, Provider certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this MSA. Provider acknowledges this MSA may be terminated and payment withheld if this certification is inaccurate.
- V. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Provider certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Provider acknowledges this Purchase Order may be terminated if this certification is or becomes inaccurate.
- W. **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.
- X. **Records Retention.** Provider will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the MSA for the duration of the MSA and for seven years after the conclusion of the MSA.
- Y. **Notices.** Any notice required or permitted under this MSA 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. 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

Provider: Facility Programming LTD
1221 Broadway, Suite 101
San Antonio, TX 78215
Attention: Doug Lowe
Phone: (210) 228-9600
Email: douglowe@facilityprogramming.com

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

The Texas A&M University System

DocuSigned by:
Jeff Zimmermann
By _____
E2BE2924E69347F...
Jeff Zimmermann
Director, Procurement & Business Services

8/27/2021 | 13:23:06 CDT

Date

**Facility Programming LTD by
Facility Programming and Consulting, Inc,
Its General Partner**

DocuSigned by:
Doug Lowe
By _____
271F7E9AE10F43F...
Doug Lowe
President

8/27/2021 | 13:20:32 CDT

Date

EXHIBIT A – SCOPE

Services will include the preparation of comprehensive Programs of Requirements 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 between the A&M System Member and the A&M System, and present the information needed by the design architects and engineers in a concise and easily understood format.

In general, a typical program could be required to address subjects to include but not be limited to the following, as applicable to a particular project and as approved by the A&M System:

Project Description

- User justification
- 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
- Council on the Built Environment (CBE) project approvals (Texas A&M only)
- Campus CEO approvals (All other system members)

General Requirements

- Project team members and roles, contact info
- User coordinator responsibilities provided by A&M System FP&C
- Codes and Regulations and other facility or certification requirements unique to the project
 - Detailed cost estimate as coordinated with A&M System FP&C to mid-point of construction ○ Programming team estimator to provide construction estimate with base bid (90%) and alternates totaling 10%.
 - Programming team to provide estimate for movable equipment based on equipment matrix and cut sheets.
 - FPC to provide overall project budget based on these inputs.
- 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 – identify requirements, roles and responsibilities
- Coordination with member institution CEO/President and CFO – identify CEO/CFO goals
- 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.)
- Building Information Modeling (BIM) requirements for the member institution
- 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, quantity and quality of existing site utilities.
- On-site utilities coordination – identify source, contact information, points of connection, etc.
- 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
- Vehicular and bicycle parking requirements

Building Requirements

- Basis of Design assumptions identifying materials, structural assumptions, mechanical, electrical, and other system requirements
- Life Cycle Cost criteria as coordinated with the A&M System FP&C
- Building maintenance plan to include operating costs/estimate of maintenance labor hours
- 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 per *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 / Design concepts
- Finishes
- Audio-Visual equipment and infrastructure requirements
- Moveable Furnishings

- Moveable Equipment
- Casework
- Fixtures
- 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 baselines

Building Configuration and Massing

- Space schematics and flow diagrams
- Departmental interaction matrix
- Room-by-room interaction matrix
- Diagrammatic block bubble plan (not circles)
- Horizontal and vertical block stacking diagrams with relative spatial requirements
- Optional Renderings and/or virtual animations

The more specific tasks to be performed in the development of Programs of Requirements, as applicable to the particular project, could include, but not be limited to, such items as the following:

Task 1 – Data Gathering

- Kick-off meeting (at A&M System Member campus)
 - + Meet with 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, and discuss the organization of facility or academic departments and identify stakeholders who will participate in data gathering
 - + Develop a schedule for the Program of Requirements preparation including associated interviews and workshops
- Preparation for Workshop(s)
 - + Prepare and distribute project questionnaires to stakeholders and receive and analyze completed questionnaires prior to holding stakeholder workshops
- Workshops(s)
 - + Conduct workshop(s) (multi-day if required) at the A&M System Member campus
 - + Conduct detailed interviews with Users and meet with other stakeholders
 - + Review current space use within each academic department
 - + 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 preliminary ideal projected space requirements of each activity and the functional relationship between all activities
 - + Present a summary of the projected space requirements 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 activity
 - + Prepare exhibits that describe the programmatic needs of each activity
 - + Develop a series of relationship diagrams

- + Identify costs associated with needed improvements, using cost per square foot benchmarks
- + 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 Workshop (at System Member Campus)
 - + Meet with A&M System Member and A&M System representatives to review the outline program
 - + Facilitate space planning workshop to assist in prioritizing and adjusting the allocation of space within the draft program
- Workshop(s) – Additional Detailed Programming (at the A&M System Member Campus)
 - + Conduct follow-up interviews as needed with Users and meet with other stakeholders
 - + Define space allocations and adjacencies
 - + Review and document detailed room requirements including furniture, fixtures, finishes, equipment and utilities
- Site development, technical requirements and cost estimate
 - + Document a recommended site use and building configuration concept
 - + Develop blocking and stacking diagrams to illustrate the preferred space allocations
 - + Identify collateral project needs such as site related issues, infrastructure improvements, MEP designs, structural engineering issues, etc., if required by the particular assignment
 - + Incorporate guidelines, standards or specifications provided by the A&M System for items such as project administration and general project requirements, building systems, information technology, safety, code requirements, etc.
 - + Incorporate a suitable project schedule and include information concerning the delivery method all in coordination with the A&M System and the A&M System Member
 - + Develop a construction cost estimate including all requirements and agreed scope of the project for a complete and functional facility
- Prepare and present final POR
 - + Prepare a 75% draft of the program and review with the A&M System Member and A&M System representatives
 - + Refine the 75% draft program based on comments received
 - + Prepare a 95% draft of the program and review with the A&M System Member and A&M System representatives
 - + Refine the 95% draft program based on comments received
 - + Prepare and issue the final version of the program

The A&M System or Member 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 or Member 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. A purchase order will establish a scope of work and a lump sum or not-to-exceed fee for each assignment upon successful negotiations.

A&M System Notification: If awarded a project by an A&M System Member (university or agency), the A&M System Office of Facilities Planning & Construction (FPC) requests that the Provider notifies FPC upon issuance of a purchase order. Notification of award may be sent through email to sking@tamus.edu.

EXHIBIT B – INSURANCE

Provider shall obtain and maintain, for the duration of this MSA 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, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to Provider under this MSA. 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 MSA 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.

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 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 Provider's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this MSA

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 Provider and its subcontractors under this MSA. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this MSA. 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 or cancellation of this MSA.
- E. Provider 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 this MSA and prior to the performance of any services by Provider under this MSA. 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 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 non-renewal 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 Provider under this MSA. 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 MSA will be emailed to the following A&M System contact in SOProurement@tamus.edu.

The insurance coverage required by this MSA 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.