

# ATTACHMENT B PROFESSIONAL SERVICES AGREEMENT

*(SAMPLE AGREEMENT – NOT FOR EXECUTION)*

## SERVICES CONTRACT

STATE OF TEXAS

PROFESSIONAL SERVICES AGREEMENT

COUNTY OF TRAVIS

Contract #2022-07

This Agreement is entered into by and between the State Preservation Board ("SPB"), an agency of the State of Texas, located at 201 E. 14th Ste., Ste. 950, Austin, TX 78701, and \_\_\_\_\_, (A/E) for professional architectural and/or engineering services.

### ARTICLE 1 SCOPE OF PROJECT

This contract engages the A/E for completion of the Project as outlined in SPB Request for Qualifications #809-\_\_\_\_\_.

[A more detailed scope will be determined upon selection of A/E]

### ARTICLE 2 CONTRACT DOCUMENTS

2.1 The Contract Documents consist of:

- 2.1.1 This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
- 2.1.2 SPB Project Manual;
- 2.1.3 The Uniform General Conditions for the State of Texas, 2015;
- 2.1.4 SPB Request for Qualifications (RFQ) #\_\_\_\_\_
- 2.1.5 A/E's Response to the RFQ if incorporated into the Project. To the extent of any conflict between A/E's Response to the RFQ and any other Contract Document, the Contract Document shall govern.
- 2.1.6 Contractor's Proposal, including Contractor's HUB Subcontracting Plan.

2.2 All of the above are attached to and incorporated as part of this Contract for all purposes. In the case of conflicts between this document and any of the above attachments, they shall follow in priority in the order presented above.

ARTICLE 3  
BASIC SERVICES

A/E agrees to provide the services (“Basic Services”) as outlined in the RFQ for the benefit of the Project and the SPB. Basic Services shall include, but shall not be limited to the following:

TBD - See RFQ for additional in[formation]

ARTICLE 4  
ADDITIONAL SERVICES

4.1 The following Additional Services are not included in Basic Services but may be required for the Project:

[TBD].

4.2. Additional Services beyond Basic Services must be approved in advance and in writing by the SPB. The SPB shall not be responsible for payment for Additional Services not approved in advance and in writing.

4.3 To the extent that the SPB requests that the A/E perform Additional Services, A/E shall complete and forward to the SPB an Additional Services Request in a form acceptable to the SPB which shall describe the nature or scope of the Additional Services to be provided and which shall include the set Not-to-Exceed fee for which A/E shall perform such Additional Services. Additional Services provided in accordance with this Section 4.3, shall entitle A/E to compensation pursuant to [TBD]. A/E shall proceed only upon written approval from the SPB to proceed.

4.4. Upon SPB’s written approval of the A/E’s Additional Service request, such Additional Services shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement.

ARTICLE 5  
A/E'S RESPONSIBILITIES

5.1 The A/E shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of this Contract, including, if applicable, workers compensation laws, compensation statutes and regulations, and licensing laws and regulations. When required, the A/E shall furnish the SPB with satisfactory proof of its compliance.

5.2 The A/E shall perform its services consistent with the professional skill and care ordinarily provided by A/E practicing in the same or similar locality under the same or similar circumstances. The A/E shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

5.3 The A/E shall coordinate its services with those services provided by the SPB and the SPB's Architect or Engineers. The A/E shall be entitled to rely on the accuracy and completeness of services and information furnished by the SPB and the SPB's Architect or Engineers. The A/E shall provide prompt written notice to the SPB if the A/E becomes aware of any error, omission or inconsistency in such services or information.

5.4 The A/E shall be responsible for any and all damage to the SPB's equipment, and/or workplace and its contents, by its, or its contractor's services, negligence in work, personnel, and equipment.

5.5 The A/E shall be responsible and liable for the safety, injury and health of its employees and contractors while they

are performing services for the SPB under this Contract.

- 5.6 The A/E shall provide all labor and equipment necessary to furnish the goods or perform the service.
- 5.7 All employees of the A/E shall be a minimum of 17 years of age and experienced in the type of work to be performed. No visitors or relatives of the A/E's employees will be allowed on state property unless they are bona fide employees of the A/E performing services under this Contract.
- 5.8 Except with the SPB's knowledge and consent, the A/E shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the A/E's professional judgment with respect to this Project.
- 5.9 A/E agrees that all information related to the Project is strictly confidential and shall not be shared or released at any time except at the SPB's direction and with the SPB's prior approval.
- 5.10 Due to security concerns related to the Project, certain aspects of the Instruments of Service shall remain in the possession of the SPB and the A/E hereby relinquishes all rights to release such information and hereby agrees to maintain confidentiality for all aspects of the Project even if the Agreement is prematurely terminated by either Party.
- 5.11 The Capitol grounds and General Land Office are secured sites. A/E shall be prepared to submit security clearance information for all employees working on site, and ensuring that security clearance requirements do not impact their ability to perform the Work defined in this Contract.
- 5.12 In the event the SPB uses the Instruments of Services without retaining the author of the Instruments of Service, the SPB releases the A/E and A/E's Architect or Engineer(s) from all claims and causes of action arising from such uses. Any unauthorized use of the Instruments of Service shall be at the SPB's sole risk and without liability to the A/E and the A/E's Architect or Engineers.
- 5.13 The A/E shall include the SPB and Project Manager in all communications with the Contractor. The SPB shall issue to the Contractor all Change Orders and other directives from the A/E.
- 5.14 The A/E shall obtain approval from the SPB prior any interaction with the City of Austin.

ARTICLE 6  
SPB RESPONSIBILITIES

- 6.1 SPB shall provide information and decisions to A/E in a timely manner and shall clearly convey the SPB's expectations to A/E.
- 6.2 The SPB's representative shall be Daniel Scott. [Daniel.Scott@tspb.texas.gov](mailto:Daniel.Scott@tspb.texas.gov)
- 6.3 SPB shall provide project milestones, budget goals, and access to Project.
- 6.4 SPB shall assist in coordination with facility occupants.
- 6.4 SPB shall convene meetings with the Project Manager and A/E for the purpose of coordination of documents and overall planning.
- 6.5 SPB reserves the right to change its designated representation and/or project manager for convenience by written notification from the Executive Director of the State Preservation Board.

6.6 The SPB reserves the right, at its sole discretion, to unilaterally amend this Contract throughout the term of the Contract to incorporate any modifications necessary for the SPB's or the A/E's compliance with all applicable state and federal laws, regulations, requirements and guidelines.

## ARTICLE 7 COMPENSATION

7.1. Compensation for Basic Services [TBD]

7.2 SPB shall be relieved of any obligation to permit performance or to pay for services performed after any termination of this Agreement.

7.3 Payments to Contractor will be made within thirty (30) days from latter of services performed or receipt of a valid, uncontested invoice in accordance with the Texas Government Code, Chapter 2251, and Texas Prompt Payment Act. SPB shall timely notify A/E within 14 days of receipt of an invoice if the SPB questions, disagrees with, or desires additional information regarding an invoice.

7.4 [Payment and compensation specifics TBD]

## ARTICLE 8 PROJECT SCHEDULE AND TERM OF AGREEMENT

8.1 [See RFQ for schedule]

8.3 This Agreement shall be effective as of the date executed by the last party and shall terminate on \_\_\_\_\_, unless extended by the parties or terminated earlier as provided in the Contract.

## ARTICLE 9 CLAIMS AND DISPUTES

9.1 If the A/E has a request for additional fees or additional time, A/E shall put that request in writing and deliver to the SPB within fourteen (14) days of the cause or basis of the request. A/E shall provide all supporting documentation related to the claim. Within thirty (30) days, or earlier if timeliness is important to the Project, the SPB shall arrange a meeting to discuss and resolve the issue. If no resolution is agreed upon in writing, the following shall apply under this agreement.

9.2 The dispute resolution process provided for in Chapter 2260 shall be used, as further described in Article 12.13.

## ARTICLE 10 TERMINATION, SUSPENSION, OR ABANDONMENT

10.1. Either party may terminate this Agreement, in whole or in part, for failure of the not-terminating Party to substantially perform. The performing Party shall deliver seven (7) days written notice of intent to terminate to the non-performing Party (delivered by certified mail, return receipt request). Such notice shall specify the basis for the claim of non-performance. The non-performing Party shall have the opportunity for consultation with the performing Party prior to termination.

10.2 Upon receipt of written notice to terminate by the SPB, the A/E shall promptly discontinue all services affected (unless the notice directs otherwise) and shall deliver or otherwise make available to the SPB all data, drawings,

specifications reports, estimates, summaries, and such other information and materials as may have been accumulated by the A/E in performing this Agreement, whether completed or in process.

10.3 If this Agreement is terminated for any reason, the SPB and the State of Texas shall not be liable to the A/E for any damages, claims, losses, or any other amounts arising from or related to any such termination.

#### ARTICLE 11: MISCELLANEOUS PROVISIONS

11.1 Terms in this Agreement shall have the same meaning as those in Uniform General Conditions of the State of Texas.

11.2 The SPB and A/E, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The A/E may not assign this Agreement, in whole or in part, and may not assign any right or duty required under it, without the prior written consent of the SPB.

11.3 Unless otherwise required in this Agreement, the A/E shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

11.4 The A/E may include photographs of the Project among the A/E's promotional and professional materials only with SPB written approval. A/E shall make a formal request including any photos or graphics A/E proposed to use. The A/E shall consider all materials to be the SPB's confidential or proprietary information even if the SPB has not previously advised the A/E that specific information is considered by the SPB to be confidential or proprietary.

11.5 When A/E receives information, the receiving Party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its Architect or Engineers and contractors who need to know the content of such information in order to perform services or construction solely and exclusively for the Project and whose contracts include similar restrictions on the use of confidential information. A/E shall contractually require its Architect or Engineers, if any, be bound by this confidentiality requirement.

#### ARTICLE 12 STANDARD TERMS AND CONDITIONS

12.1 **Anti Trust Affirmation:** The undersigned affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response, neither I nor any representative of the Respondent have violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Response, neither I nor any representative of the Respondent have violated any federal antitrust law; and (3) neither I nor any representative of the Respondent have directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Respondent.

12.2 **Americans With Disabilities Act:** Respondent represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.

12.3 **Assignment:** Respondent shall not assign its rights under the contract or delegate the performance of its

duties under the contract without prior written approval from the Agency. Any attempted assignment in violation of this provision is void and without effect.

- 12.4 **Binding Effect:** The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees and delegates.
- 12.5 **Change in Law and Compliance with Laws:** Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
- 12.6 **Child Support Obligation Affirmation:** Under Section 231.006 of the 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.
- 12.7 **COVID-19 Vaccine Passport Prohibition:** Respondent certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Respondent's business. Respondent acknowledges that such a vaccine or recovery requirement would make Respondent ineligible for a state-funded contract.
- 12.8 **Damage to Government Property:** Respondent shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Respondent shall notify the Agency in writing of any such damage within one (1) calendar day.
- 12.9 **Dealings with Public Servants Affirmation:** Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response.
- 12.10 **Debts and Delinquencies Affirmation:** Respondent agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the State of Texas. Respondent agrees that any payments due under the contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
- 12.11 **Disaster Recovery Plan:** In accordance with 13 TAC § 6.94(a) (9), Respondent shall provide to Agency the descriptions of its business continuity and disaster recovery plans.
- 12.12 **Disclosure of Prior State Employment:** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Respondent certifies that it does not employ an individual who has been employed by Agency or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Respondent has disclosed in its Response the following: (i) the nature of the previous employment with Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.
- 12.13 **Dispute Resolution:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract. If the Contractor's claim for breach of Contract cannot be resolved informally with the Agency, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by

Chapter 2260, to the individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under §2260.051 of the Texas Government Code. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260. The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the Agency if the parties are unable to resolve their disputes as described above. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the Agency, the Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or while the dispute is pending. However, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

- 12.14 **Drug-Free Workplace:** Respondent represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. § 701 et seq.) and maintain a drug-free work environment.
- 12.15 **Electrical Items:** All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
- 12.16 **Equal Employment Opportunity:** Respondent represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.
- 12.17 **Energy Company Boycotts:** Respondent represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify Agency.
- 12.18 **Entities that Boycott Israel:** Respondent represents and warrants that (1) it does not, and shall not for the duration of the contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify Agency.
- 12.19 **E-Verify Program:** Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:  
1. all persons employed by Respondent to perform duties within Texas; and 2. all persons, including subcontractors, assigned by Respondent to perform work pursuant the contract within the United States of America.
- 12.20 **Excess Obligations Prohibited:** The contract is subject to termination or cancellation, without penalty to Agency, either in whole or in part, subject to the availability of state funds. Any contract resulting from this Solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.
- 12.21 **Excluded Parties:** Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
- 12.22 **Executive Head of a State Agency Affirmation:** In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of the Agency, (2) a person who at any time during the four years before the date of the contract

was the executive head of the Agency, or (3) a person who employs a current or former executive head of the Agency.

- 12.23 False Statements:** Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.
- 12.24 Financial Participation Prohibited Affirmation:** Pursuant to Section 2155.004(a) of the Texas Government Code, Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from Agency to participate in the preparation of the specifications or solicitation on which this Response or contract is based. Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
- 12.25 Firearm Entities and Trade Associations Discrimination:** Respondent verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify Agency.
- 12.26 Force Majeure:** Neither Respondent nor Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.
- 12.27 Foreign Terrorist Organizations:** Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- 12.28 Former Agency Employees:** In accordance with Section 2252.901 of the Texas Government Code, Respondent represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the Agency during the twelve (12) month period immediately prior to the date of execution of the contract.
- 12.29 Governing Law and Venue** The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.
- 12.30 Human Trafficking Prohibition:** Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the



specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

- 12.31 **Indemnification:** RESPONDENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF RESPONDENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. RESPONDENT AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
- 12.32 **Indemnification (IP):** RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF RESPONDENT PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) AGENCY'S AND/OR RESPONDENT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO AGENCY BY RESPONDENT OR OTHERWISE TO WHICH AGENCY HAS ACCESS AS A RESULT OF RESPONDENT'S PERFORMANCE UNDER THE CONTRACT. RESPONDENT AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. RESPONDENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL(OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, RESPONDENT WILL REIMBURSE AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF RESPONDENT OR IF AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND RESPONDENT WILL PAY ALL REASONABLE COSTS OF AGENCY'S COUNSEL.
- 12.33 **Immigration:** Respondent represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.
- 12.34 **Independent Contractor:** Respondent acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Respondent and its personnel are not employees of the Agency or the State of Texas.
- 12.35 **No Conflict of Interest:** Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

- 12.36 **Lobbying Prohibition:** Respondent represents and warrants that Agency's payments to Respondent and Respondent's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.
- 12.37 **Media Releases:** Respondent shall not use Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without Agency's prior written approval. Agency does not endorse any vendor, commodity, or service. Respondent is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response or the services to which they relate without Agency's prior written consent, and then only in accordance with explicit written instructions from Agency.
- 12.38 **No Felony Criminal Convictions:** Respondent represents that neither Respondent nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Respondent has fully advised Agency in writing of the facts and circumstances surrounding the convictions.
- 12.39 **Prior Disaster Relief Contract Violation:** Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a Response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 12.40 **Public Information Act** Respondent understands that Agency will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- 12.41 **Limitation on Authority:** Respondent shall have no authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Respondent may not incur any debt, obligation, expense or liability of any kind on behalf of Agency or the State of Texas.
- 12.42 **No Implied Waiver:** The failure of a Party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in the contract shall not be construed as a waiver or a relinquishment thereof for the future.
- 12.43 **No Third-Party Beneficiaries:** The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right,

interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

- 12.44 **Prompt Payment:** Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment
- 12.45 **Records Retention:** Respondent shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Respondent for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.
- 12.46 **Refund:** Respondent will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by Agency which are not expressly authorized under the contract.
- 12.47 **Restricted Employment for Certain State Personnel:** Pursuant to Section 572.069 of the Texas Government Code, Respondent certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for Agency involving Respondent within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
- 12.48 **Signature Authority:** By submitting the Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of this Response. The undersigned certifies that I am duly authorized to submit this Response and execute a contract on my own behalf or on behalf of the Respondent listed below.
- 12.49 **State Auditor's Right to Audit:** Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by the Respondent or any other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Respondent shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract it awards.
- 12.50 **Suspension and Debarment:** Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.
- 12.51 **Severability:** If any provision of the contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and

stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

- 12.52 **Sovereign Immunity:** Nothing in the contract shall be construed as a waiver of the Agency's or the State's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the Agency or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to Agency or the State of Texas under the contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Agency does not waive any privileges, rights, defenses, or immunities available to Agency by entering into the contract or by its conduct prior to or subsequent to entering into the contract.
- 12.53 **Subcontractors:** Respondent may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the Agency. Subcontracts, if any, entered into by the Respondent shall be in writing and be subject to the requirements of the contract. Should Respondent subcontract any of the services required in the contract, Respondent expressly understands and acknowledges that in entering into such subcontract(s), Agency is in no manner liable to any subcontractor(s) of Respondent. In no event shall this provision relieve Respondent of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.
- 12.54 **Survival:** Expiration or termination of the contract for any reason does not release Respondent from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.
- 12.55 **Taxes:** Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Agency will furnish Tax Exemption Certificates upon request. Respondent represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Respondent or its employees. Agency shall not be liable for any taxes resulting from the contract.
- 12.56 **Termination for Convenience:** Agency reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if Agency determines that such termination is in the best interest of the state. In the event of such a termination, Respondent must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Agency shall be liable for payments limited only to the portion of work Agency authorized in writing and which Respondent has completed, delivered to Agency, and which has been accepted by Agency. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. Agency shall have no other liability, including no liability for any costs associated with the termination.
- 12.57 **Technology Access Clause:** Respondent expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairment. Accordingly, Respondent represents and

warrants to Agency that the technology provided to Agency for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: • providing equivalent access for effective use by both visual and non-visual means; • presenting information, including prompts used for interactive communications, in formats intended for nonvisual use; and • being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this Section, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

**12.58 Terms and Conditions Attached to Response:** Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response. TEX GOVT CODE § 2155.0012 EXCEPTION: Clause does not apply to contracts but is an Essential Clause for solicitations. This clause ensures that Responses received by the agency are complete prior to the closing date of the solicitation.

**12.59 Texas Bidder Affirmation:** Respondent certifies that if a Texas address is shown as the address of the Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

**12.60 Unfair Business Practices:** Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Respondent has not been found to be liable for such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

**12.61 Use of State Property:** Respondent is prohibited from using State Property for any purpose other than performing Services authorized under the contract. State Property includes, but is not limited to, Agency’s office space, identification badges, Agency information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Agency issued software, and the Agency Virtual Private Network (VPN client)), and any other resources of Agency. Respondent shall not remove State Property from the continental United States. In addition, Respondent may not use any computing device to access Agency’s network or e-mail while outside of the continental United States. Respondent shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of Respondent, Respondent shall be responsible for (i) all repair and replacement charges incurred by Agency that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Respondent’s use of State Property that exceeds the contract scope. Respondent shall fully reimburse such charges to Agency within ten (10) calendar days of Respondent’s receipt of Agency’s notice of amount due. Use of State Property for a purpose not authorized by contract shall

constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to Agency under contract, at law, or in equity.

ARTICLE 13  
INSURANCE

13.1 Architect or Engineer shall purchase and maintain insurance, in full force at all times and at its expense, as shall protect the Architect or Engineer from claims that may arise out of or result from the Architect or Engineer's performance of service pursuant to this Agreement, in the following types and amounts for the duration of this Agreement, and any extensions thereof, and furnish original Certificates of Insurance, including policy declaration and policy endorsements before work commences as evidence thereof:

13.1.1. Minimum Insurance Coverage:

13.1.1.1 Professional liability/errors & omissions coverage with a minimum limit of \$1,000,000 per claim and in the aggregate to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed with respect to plans, maps, drawings, analysis, reports, surveys, change orders, designs, or specifications, including any and all professional services provided by the insured.

The Architect or Engineer shall provide for a discovery period on any professional liability policies that are commensurate with the applicable statute of limitations or for not less than twenty-four (24) months following completion of services under this Agreement, whichever is longer.

13.1.1.2 Workers Compensation: Minimum coverage for employer liability as determined by the Texas Department of Insurance.

13.1.1.3 Commercial General Liability Insurance: \$1,000,000 minimum each occurrence limit; \$2,000,000 minimum general aggregate limit.

13.1.1.4 Automobile Liability Insurance for all owned, non-owned, and hired vehicles: Minimum combined single limit for bodily injury and property damage of \$1,000,000 per occurrence.

13.1.2 General Requirements for Insurance:

Architect or Engineer agrees that each of the insurance policies obtained shall meet the requirements of this Agreement and contain the following:

13.1.2.1 The Architect or Engineer shall be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention shall be disclosed on the certificate of insurance required above and must be approved by the Owner. Actual losses not covered by insurance as required by this Agreement shall be paid by the Architect or Engineer.

13.1.2.2 All insurance coverage obtained by Architect or Engineer to fulfill the requirements hereunder shall be on an occurrence basis, except Errors and Omissions, which may be on a claims-made basis. If a policy (Professional Liability only) is underwritten on a "Claims-made" basis, the "retroactive date" (as shall be defined in the insurance policy) shall be prior to or coincident with the effective date of the Agreement and the Certificate of Insurance shall state that coverage is "claims-made" and also the Retroactive Date.

- 13.1.2.3 Architect or Engineer shall maintain coverage for the duration of the Agreement and for two years following the completion of the work under the Agreement. The Architect or Engineer shall, on at least an annual basis, provide the SPB with an insurance certificate as evidence of insurance. The premium for the reporting period shall be paid by the Architect or Engineer.
- 13.1.2.4 The Parties agree that the policies required in this Agreement, shall be considered primary coverage, as applicable.
- 13.1.2.5 Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A.M. Best rating of A or better.
- 13.1.2.6 All certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or limited until thirty (30) days after the SPB has received written notice.
- 13.1.2.7 Unless the requisite prior notification has been provided to the SPB and replacement insurance meeting all of the requirements of this Agreement has been obtained, Architect or Engineer shall not cause or allow any of its insurance coverage to be canceled nor permit any insurance coverage to lapse during the term of the Agreement or as required in the Agreement.
- 13.1.2.8 The SPB reserves the right to review the insurance requirements of this section during the effective period of the Agreement and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by the SPB based upon changes in statutory law, court decisions or the claims history of the industry as well as the Architect or Engineer (such adjustments shall be commercially available to the Architect or Engineer). If the implementation of such revised insurance coverage/limits would result in additional costs to the Architect or Engineer, the Architect or Engineer may request additional compensation from the SPB under the provisions of [\_\_\_] herein.

The terms of this contract are accepted by the parties to the contract. Persons signing are expressly authorized to obligate the parties to the terms of this contract. The undersigned hereby agree to the terms and conditions of this Agreement:

OWNER  
State Preservation Board

ARCHITECT OR ENGINEER

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Approved as to Form:**

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SPB Attorney

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Date