

**INTERAGENCY COOPERATION CONTRACT
BETWEEN
TEXAS FACILITIES COMMISSION
AND
TEXAS RAILROAD COMMISSION**

This Interagency Cooperation Contract (“Contract”) is entered into by and between the **Texas Facilities Commission** (“TFC”) and the **Texas Railroad Commission** (“Receiving Agency”), pursuant to the authority granted by and in compliance with the provisions of the Interagency Cooperation Act, Tex. Gov’t Code Ann. §§ 771.001-.010.

I. STATEMENT OF WORK TO BE PERFORMED.

1.1 **SCOPE OF SERVICES.** TFC shall provide or cause to be provided the addition of a security wall inside Room 8-180 of the William B. Travis State Office Building, located at 1701 North Congress Avenue, Austin, Texas. Services under this Interagency Cooperation Contract (the “Contract”) shall be provided as more specifically set forth in the *Maintenance Letter Agreement No. 8239487 dated November 17, 2022, Estimate Summary, Attachment A, and Updated Portal Request No. 24679*, attached hereto as **Exhibit A** and incorporated herein for all purposes (hereinafter referred to as the “Project”). The Project will comply with applicable safety and building codes and all other applicable rules, regulations, and laws.

II. BASIS FOR COMPUTING REIMBURSABLE COSTS.

2.1 **REIMBURSABLE COSTS.** Subject to the Cost Principles set forth in the *Texas Grant Management Standards Version 1.1*, the basis for computing reimbursable costs under this Contract shall be for actual costs incurred by TFC and developed from estimates received from third-party contractors.

III. CONSIDERATION.

3.1 **CONTRACT AMOUNT.** Receiving Agency agrees to pay TFC an amount not to exceed the sum of **\$57,894.73** for providing the services required to fulfill the terms of this Contract as set forth in **Exhibit A**, as incorporated. TFC will be responsible for oversight and payment for all third-party contracted services for the Project.

3.2 **ACTUAL COSTS.** If actual costs for contracted services provided by third-party contractors for work requested by Receiving Agency will exceed the amount allocated for said service, TFC will provide notice and a revised estimate to Receiving Agency. Prior to exceeding the Contract Amount, the parties will agree to amend this Contract to reimburse for such increased actual costs on a dollar-for-dollar basis. If actual costs for contracted services by third-party contractors are less than the maximum contract amount, TFC will return any amount that exceeds actual costs to Receiving Agency.

IV. PAYMENT FOR SERVICES.

4.1 **PAYMENT.** An Interagency Transaction Voucher or Invoice (ITV) for these services will be prepared by TFC for the full amount of this Contract. Receiving Agency shall reimburse TFC within thirty (30) calendar days from receipt of ITV or invoice for the full amount of this Contract. If payment by Receiving Agency is not received within thirty (30) calendar days, TFC may cancel the Contract without further notice to Receiving Agency, and Receiving Agency shall remain liable for all actual costs incurred by TFC prior to the termination of this Contract in delivering services under this Contract. All payments to be made to a third-party contractor for services performed under this Contract shall be paid by TFC directly to third-party contractor(s). TFC will be responsible for any interest that accrues as a result of a late payment as defined under the Texas Government Code, Chapter 2251. TFC will process all expenditures under this Contract as non-TFC capital budget expenses in that Receiving Agency shall have processed these expenditures as capital expenditures pursuant to General Appropriations Act ("GAA"), GAA, Acts 2021, S.B. 1, 87th Leg., R.S., art. IX, Sec. 14.03.

4.2 **UNIFORM STATE ACCOUNTING SYSTEM ("USAS").** To the extent possible, interagency payments involving only treasury funds will be processed as paperless document transfers in the USAS system subject to audit by the Fund Accounting Division of the Comptroller's Office. Payments from treasury funds for deposit into local bank accounts will be processed in USAS through the paperless purchase vouchers process. Interagency payments received from local funds for deposit into the State Treasury must be submitted according to policies and procedures for USAS deposits.

4.3 **REIMBURSEMENT.** (a) Reimbursements with funds contained in the State Treasury shall be made via USAS funds transfers, with Receiving Agency initiating the transfers. TFC will provide Receiving Agency with all the necessary USAS coding elements. Reimbursement with funds outside the State Treasury shall be made by Receiving Agency issuing warrants for payment to TFC.

(b) All reimbursements must be made through the use of local funds or drawn on the appropriated item(s) or account(s) of Receiving Agency from which the agency would ordinarily make expenditures for similar services or resources. Reimbursements will be credited to the appropriation year in which the expenses were incurred.

(c) To comply with the GAA, Acts 2021, S.B. 1, 87th Leg., R.S., art. IX, sec. 6.08, entities making payments from funding sources other than General Revenue Fund appropriations, shall remit an additional amount equal to the percentage of direct labor costs, necessary to cover the cost of the benefits.

4.4 **CAPITAL BUDGET AUTHORITY.** Pursuant to Rider 15 entitled *Capital Construction on Behalf of State Agencies* for TFC found in the GAA, Acts 2021, S.B. 1, 87th Leg., R.S., art. 1 (Facilities Commission), any capital items related to construction of buildings and facilities including minor construction up to \$250,000 performed by TFC on behalf of other state agencies do not apply to TFC for the purpose of the capital budget rider limitations specified in the GAA, Acts 2021, S.B. 1, 87th Leg., R.S., art. IX, sec. 14.03. By signing this Contract, Receiving Agency

certifies it has the requisite capital budget authority to fund the services to be provided under this Contract.

V. TERM OF CONTRACT.

5.1 **TERM.** This Contract shall be effective upon the date of the last party to sign, and shall terminate on **December 31, 2024**, unless terminated earlier by either party, as provided in Section 5.

5.2 **OPTION TO EXTEND.** This Contract may be extended by a written amendment signed by both parties.

5.3 **DISPUTE RESOLUTION.** The parties agree to use good-faith efforts to decide all questions, difficulties, or disputes of any nature that may arise under or by this Contract; provided however, nothing in this paragraph shall preclude either party from pursuing any remedies as may be available under Texas law.

5.4 **EARLY TERMINATION.** (a) Either party may terminate this Contract upon thirty (30) days prior written notice to the other. Upon receipt of notice of early termination, TFC shall cancel, withdraw, or otherwise terminate outstanding orders or subcontracts which relate to the performance of this Contract and shall otherwise cease to incur costs under this Contract. Early termination will be subject to an equitable settlement of the respective interests of the parties accrued up to the date of termination.

(b) If this Contract is terminated for any reason, TFC will not be liable for any damages, claims, or losses, or any other amounts arising from or related to any such termination.

VI. FUNDING.

6.1 **NO DEBT.** This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or Receiving Agency and/or TFC in violation of Tex. Const. art. III, § 49. In compliance with Tex. Const. art. VIII, § 6, it is understood that all obligations of TFC and Receiving Agency hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

VII. FORCE MAJEURE.

7.1 **FORCE MAJEURE.** Except as otherwise provided, neither TFC nor Receiving Agency is liable to the other for any delay in, or failure of performance, of a requirement contained in this 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, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise or 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. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure.

VIII. PUBLIC RECORDS.

8.1 **PUBLIC RECORDS.** This Contract and/or any amendment to this Contract and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. Notwithstanding any provisions of this Contract to the contrary, Receiving Agency understands that TFC will comply with the Texas Public Information Act, Tex. Gov't. Code Ann. Ch. 552. If contacted by TFC, Receiving Agency will cooperate with TFC in the production of documents responsive to the request. Receiving Agency agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. Receiving Agency may request that TFC seek an opinion from the Office of the Attorney General of Texas. However, the final decision whether to seek a ruling from the Office of the Attorney General of Texas will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, in accordance with the requirements of the Texas Public Information Act, Receiving Agency will notify TFC's general counsel of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Contract and/or any amendment to this Contract. Receiving Agency agrees to maintain the confidentiality of information received from TFC during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

IX. MISCELLANEOUS PROVISIONS.

9.1 **INDEPENDENT CONTRACTOR.** It is further mutually understood and agreed that Receiving Agency is contracting with TFC as an independent contractor.

9.2 **INCORPORATION BY REFERENCE.** Incorporated by reference the same as if specifically written herein are the rules, regulations, and all other requirements imposed by law, including but not limited to compliance with those applicable rules and regulations of the State of Texas and the federal government, all of which shall apply to the performance of the services under this Contract.

9.3 **GOVERNING LAW AND VENUE.** This Contract shall be governed and construed in accordance with the laws of the State of Texas. **VENUE OF ANY SUIT BROUGHT FOR BREACH OF THIS CONTRACT SHALL BE FIXED IN ANY COURT OF COMPETENT JURISDICTION IN TRAVIS COUNTY, TEXAS;** provided, however, the foregoing shall not be construed as a waiver of sovereign immunity by either party.

9.4 **SEVERANCE.** Should any one or more provisions of this Contract be held to be void, voidable, or for any reason whatsoever of no force and effect, such provision(s) shall be construed as severable from the remainder of this Contract and shall not affect the validity of all other provisions of this Contract, which shall remain of full force and effect.

9.5 **HEADINGS.** The headings contained in this Contract are for reference purposes only and shall not in any way affect the meaning or interpretation of this Contract.

9.6 **NOTICES.** Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to TFC or Receiving Agency, as the case may be, at the addresses set forth below:

TFC: General Counsel
 Texas Facilities Commission
 1711 San Jacinto Boulevard
 Austin, Texas 78701
 Office: (512) 475-2400

Receiving Agency: Donna Walker, Support Services Manager
 Texas Railroad Commission
 1701 North Congress Avenue
 Austin, Texas 78701
 Email: Donna.Walker@rrc.texas.gov
 Phone: (512) 354-5662

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

9.7 **AUDIT.** Pursuant to Section 2262.154 of the Texas Government Code, TFC and Receiving Agency agree to the following:

(a) the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the Contract;

(b) acceptance of funds 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;

(c) under the direction of the legislative audit committee, an 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;

(d) Receiving Agency may conduct an audit or investigation of TFC or any other entity receiving funds from Receiving Agency directly under the contract or indirectly through a subcontract under the Contract;

(e) acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of Receiving Agency to conduct an audit or

investigation in connection with those funds;

(f) an entity, including TFC, that is the subject of an audit or investigation by Receiving Agency must provide Receiving Agency with timely access to any information Receiving Agency considers relevant to the investigation or audit;

(g) an entity, including TFC, that is receiving funds under the contract must maintain all such documents and other records relating to the contract for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later; and

(h) in the event that an audit by Receiving Agency reveals any errors that resulted in overpayments to an entity, including TFC, that is receiving funds under the contract, the entity must refund to Receiving Agency the full amount of such overpayments within thirty (30) calendar days of such audit findings, or Receiving Agency at its option may deduct such amounts from any payments due to the entity.

9.8 ENTIRE AGREEMENT. This Contract constitutes the entire agreement of the parties. No other agreement, statement, or promise that is not contained in this Contract shall be binding except a subsequent written amendment to this Contract signed by both parties.

9.9 THE UNDERSIGNED do hereby certify that:

(a) the services specified above are necessary and essential and are properly within the statutory functions and programs of the affected agencies of State Government;

(b) the proposed arrangements serve the interest of efficient and economical administration of those agencies;

(c) the services, supplies or materials contracted for are not required by Tex. Const. art. XVI, § 21 to be supplied under contract to the lowest responsible bidder; and

(d) the contract neither requires, nor permits either party to exceed its duties and responsibilities or the limitations of its appropriated funds.

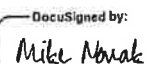
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TFC certifies that it has the authority to enter into this Contract by virtue of the authority granted in Chapter 771, Tex. Gov't Code Ann.

Receiving Agency further certifies that it has the authority to enter into this Contract by virtue of the authority granted in Chapter 771, Tex. Gov't Code Ann.

TEXAS FACILITIES COMMISSION

TEXAS RAILROAD COMMISSION

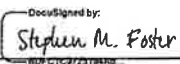
By: 
Mike Novak
Executive Director

By: 
Randall Collins
Assistant Executive Director

Date signed: 01/23/2023 | 11:40 AM CST

Date signed: 1/12/2023

Approved:


Stephen M. Foster
General Counsel

Mgr/Kirk Kuykendall 

Dir/Craig Wingfield 

DED/John S. Raff 