

**AGREEMENT
BETWEEN OWNER AND PROJECT ENGINEER**

This Agreement is made as of _____, 20____ (the “Effective Date”)

By and between

The Owner: Texas State Technical College
3801 Campus Dr.
Waco, TX 76705

and **Project Engineer:** TBD

Texas Tax Account No.: _____

for the following **Project:** TSTC Master Water Distribution Plan and Phased Construction Documents
TSTC Waco
Waco, Tx

Project Number: __TBD__

PPL Contract Number: __TBD__

Project Delivery Method:

The Owner and the Project Engineer agree as follows:

The Engineer will conduct a Master Water Distribution Plan for the campus. The Master Plan will include creating a model of the existing system and identify areas of the system which need immediate attention, areas of the system which are oversized and make recommendations for water main sizes to adequately serve the college. Based on these findings, and coordinating with the Owner, develop phased construction documents for the replacement of the water mains to eliminate and/or reduce dead ends and zones, and reduce and/or eliminate the need for flushing. As funding permits and at the discretion of the Owner, the Engineer will be retained to provide construction administration services, including bidding, contract administration, and as-built documentation for each construction phase.

TABLE OF CONTENTS

ARTICLE

1	PROJECT ENGINEER’S SERVICES AND RESPONSIBILITIES
1.1	Basic Services
1.2	Schematic Design Phase
1.3	Design Development Phase
1.4	Construction Document Phase
1.5	Bidding and Proposal Phase
1.6	Construction Phase – Administration of the Construction Contract
1.7	Additional Services
1.8	Time
2	OWNER’S RESPONSIBILITIES
3	CONSTRUCTION COST - DEFINITION
4	DIRECT SALARY EXPENSE
5	REIMBURSABLE EXPENSES
6	BASIS OF COMPENSATION
6.1	Basic Services Fee
6.2	Fees for changes in Project Scope
6.3	Fees for Change Order Services
6.4	Additional Services
6.5	Reimbursable Expenses
7	PAYMENTS TO THE PROJECT ENGINEER
7.1	Payments for Basic Services
7.2	Payments for Additional Services and Reimbursable Expenses
7.3	Payments Withheld
8	PROJECT ENGINEER ACCOUNTING RECORDS
9	OWNERSHIP AND USE OF DOCUMENTS
10	TERMINATION OF AGREEMENT
11	SUCCESSORS AND ASSIGNS
12	EXTENT OF AGREEMENT
13	MISCELLANEOUS PROVISIONS
13.1	Captions
13.2	Governing Law
13.3	Waivers
13.4	Severability

13.5	Independent Contractor
13.6	Child Support Certification
13.7	Eligibility Certification
13.8	Franchise Tax Certification
13.9	Payment of Debt or Delinquency to the State
13.10	Loss of Funding
13.11	Proprietary Interests
13.12	Appointment
13.13	Dispute Resolution
13.14	Notices
13.15	Authority to Act
13.16	Counterparts
14	OTHER CONDITIONS OR SERVICES
14.1	Basic Services
14.2	Additional Services
14.3	Owner Provided Services
14.4	Basis of Compensation
14.5	Progress Payments
14.6	Review Stages
14.7	Construction Cost Estimates
14.8	Review Documents
14.9	Partnering
14.10	CADD Standards

LIST OF EXHIBITS

Exh A	Proposal
Exh B	Project Milestone Schedule
Exh C	Personnel Titles and Hourly Rates
Exh D	Statement For Architectural/Engineering Services (Includes Attachments H to Exhibit D-Documentation of Subcontracted Work)
Exh E	Anticipated Programming Deliverables
Exh F	Scope
Exh G	
Exh H	Policy on Utilization, Historically Underutilized Businesses Attachment 1 to Exhibit H—HUB Subcontracting Plan
Exh I	
Exh J	Additional Services Proposal Form
Exh K	Adjustment to Basic Services Compensation

Article 1 Project Engineer's Services and Responsibilities

The Project Engineer shall provide the usual and customary Basic Services necessary and reasonably inferable to complete the Project and each phase of the project described in Paragraphs 1.2 through 1.6, below, along with any Additional Services requested by the Owner.

1.1 Basic Services

1.1.1 **Basic Services.** The Project Engineer's Basic Services included all disciplines identified in Article 14 and all related usual and customary design, consultant, and other services necessary and reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Owner's requirements and the terms of this Agreement.

1.1.2 The Construction Cost Limitation for this Project is specified in Article 14. The Project Engineer is responsible for managing the design of the Project so that its construction does not exceed the Construction Cost Limitation.

1.1.3 The Project Engineer shall manage the design of the Project to achieve the Scope objectives of scope and cost through completion and acceptance of Construction Documents phase. The Project Engineer shall advise the Owner of any adjustments to the scope or quality of the Project necessary to comply with the Construction Cost Limitation during design development as part of Basic Services.

1.1.4 The Project Engineer shall submit the names of all consultants, persons, or firms, which the Project Engineer proposes to use in the execution of its services and shall provide the Owner with a fully executed copy of each contract or agreement that the Project Engineer enters into with any consultant. The Project Engineer is responsible for coordinating the work of all of its consultants to assure that their services are appropriate for and adequately incorporated into the design of the Project. The Owner reserves the right, in its sole discretion, to reject the employment by Engineer of any consultant for the Project to which Owner has a reasonable objection. Engineer, however, shall not be required to contract with any consultant to which it has a reasonable objection.

1.1.5 The Project Engineer shall pay for its consultants' services out of its fees. The Owner is not responsible for any consultant fees or costs unless expressly agreed to in writing.

1.1.6 The Project Engineer agrees to allocate work to consultants that are historically underutilized businesses in accordance with a good faith effort. No changes to the HUB Subcontracting Plan may be made unless approved in writing by the Owner. While this Agreement is in effect and until the expiration of one year after final completion, the Owner may require information from the Project Engineer, and may conduct audits, to assure that the Plan is followed.

1.1.7 Basic design services shall include incorporation of the provisions of the Energy Conservation Design Standard for New State Buildings as administered by the State Energy Conservation Office, State Comptroller's Office of the State of Texas. Project Engineer shall provide the Owner with a Statement of Compliance and associated compliance documentation as required.

1.1.8 Basic design services shall include incorporation of the provisions of the Xeriscape Landscaping design requirements as adopted by the State of Texas Building & Procurement Division for Xeriscape landscaping on new construction projects, pursuant to Section 2166.404 *Texas Government Code*. Project Engineer shall provide site analysis and design to incorporate these provisions. A

summary of the project requirements meeting these guidelines shall also be provided for the Design Development submittal package.

1.1.9 The Project Engineer, as part of Basic Services, shall prepare a detailed Construction Cost Estimates of the Project in a form acceptable to the Owner following the Construction Specifications Institute (CSI) format. Updated Estimates shall be included with the plans and specifications submitted for review at completion of the Design Development phase and at the stages of completion of the Construction Documents required in Article 14. If the Construction Cost Estimate exceeds the Construction Cost Limitation at any time, the Owner will determine whether to increase the Construction Cost Limitation or require the Project Engineer to revise the Project scope or quality to comply with the Construction Cost Limitation at no additional cost to Owner. Reductions in Project scope or quality are subject to Owner's review and approval. If the Construction Cost Estimate is below the Construction Cost Limitation, the Owner and Project Engineer shall mutually agree on changes to the project scope or the Construction Cost Limitation.

1.1.10 The Project Engineer shall submit documents to the Owner for review at completion of the Schematic Design and Design Development phases and at the stages of completion of the Construction Documents as described in Article 14. The Project Engineer shall incorporate into the documents such corrections and amendments as the Owner requests, unless the Engineer objects in writing and receives the Owner's consent not to make the changes. The Project Engineer will be responsible for any damages incurred by the Owner that are caused by Project Engineer's failure to incorporate requested corrections and amendments to the documents.

1.1.11 Project Engineer shall provide a review and comment form acceptable to the Owner for Owner's use during document review. Owner will provide its review comments to Project Engineer on the form and the Project Engineer shall provide a detailed written response to each of the Owner's review comments indicating where and how they have been addressed in the design documents. At each required document submittal stage, the Project Engineer shall include the completed comment form from the preceding submittal along with a cover letter signed by a firm principal affirming that the previous review comments have been fully addressed in the current submittal. Failure to respond to the previous comments or to provide the written affirmation may result in reduction or rejection of the Project Engineer's then current Statement for Architectural/Engineering Services. Owner's approval of the revised drawing shall not be deemed to be an approval of any unlisted changes, and any costs or expense for any Project Engineer's additional services subsequently incurred for such unlisted changes shall be borne or reimbursed by Project Engineer.

1.1.12 Project Engineer agrees and acknowledges that Owner is entering into this Agreement in reliance on Project Engineer's represented professional abilities with respect to performing Project Engineer's services, duties, and obligations under this Agreement. Project Engineer agrees to use Project Engineer's best professional efforts, skill, judgment, and abilities in performing Project Engineer's services. Project Engineer shall perform its Services diligently and shall endeavor to further the interest of the Owner in accordance with Owner's requirements and procedures. Project Engineer agrees to use its best efforts to perform its services (i) in accordance with the usual and customary professional standards of care, skill and diligence consistent with good Engineering practices for Professional Engineers in Texas that provide professional engineering services for projects that are similar in size, scope, and budget to the Project, and (ii) in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. There are no obligations, commitments, or impediments of any kind known to the Project Engineer that will limit or prevent performance by Project Engineer of its services. Project Engineer hereby agrees to correct, at its own cost, any of its Services, and the services of its consultants, that do not meet the standard of care.

1.1.13 Project Engineer shall take reasonable precautions to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Project Engineer (by Owner or any other party) that Project Engineer uses for the Project. Project Engineer shall identify to the Owner in writing any such documents or data which, in Project Engineer's professional opinion, are unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. Owner does not warrant for the accuracy or suitability of such documents or data as are furnished unless Project Engineer advises Owner in writing that in Project Engineer's professional opinion such documents or data are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes Project Engineer to proceed in accordance with the documents or data as originally given.

1.1.14 Project Engineer's services shall be reasonably accurate and free from any material errors or omissions. Neither acceptance nor approval of Project Engineer's services by the Owner shall relieve Project Engineer of any of its professional duties or release it from any liability, it being understood that Owner is, at all times, relying upon Project Engineer for its skill and knowledge in performing Project Engineer's services. Owner shall have the right to reject any of Project Engineer's services because of any fault or defect in the Project due to any material errors or omissions in the plans, drawings, specifications, and other materials prepared by Project Engineer or its consultants. Upon notice of any such errors or omissions, Project Engineer shall promptly provide any and all services necessary to correct or remedy them at no additional cost to the Owner. Project Engineer's obligation to correct its errors and omissions is in addition to, and not in substitution for, any other remedy for defective services which Owner may have at law or in equity, or both.

1.1.15 The Project Engineer shall not proceed to any phase of design not expressly authorized by the Owner, except at the Project Engineer's own financial risk.

1.1.16 Project Engineer agrees to furnish efficient business administration and superintendence and to use Project Engineer's best efforts to design the Project in an expeditious and economical manner consistent with the interest of Owner and Project Engineer's professional skill and care.

1.1.17 Project Engineer shall allocate adequate time, personnel and resources as necessary to perform its services. Project Engineer's Senior Principal(s) responsible for managing the Project is identified in Exhibit C and shall not be changed without the prior approval of the Owner. The day-to-day Project team will be led by the Senior Principal(s) unless otherwise directed by Owner or prevented by factors beyond the control of Project Engineer. The Senior Principal(s) shall act on behalf of Project Engineer with respect to all phases of Project Engineer's Services and shall be available as required for the benefit of the Project and Owner.

1.1.18 Project Engineer shall make reasonable efforts to investigate any documents provided by the Owner and the visible existing conditions at the Project site to identify existing systems and construction which must be modified to accommodate the Project Engineer's design for the Project and the construction of the Project. The Project Engineer shall identify to Owner any discrepancies between the documents and visible conditions, and shall consult with the Owner on any special measures, services or further investigations required for Project Engineer to perform its services free from material errors and omissions and to properly coordinate with existing systems and construction. This investigation shall be accomplished by registered, professional Engineers, as appropriate.

1.1.19 The Project Engineer, when requested by the Owner, shall coordinate the purchase of additional reprographic materials for bidding or proposal purposes or when additional review sets, in excess of those required by Article 1.4, are required by the Owner. The Project Engineer shall present a Tax Exemption Certificate to the vendor and coordinate the Owner's requirements for type, quantity and

invoice billing. When requested, the Project Engineer will account to the Owner for all additional materials ordered by the Owner through the A/E as the Owner's agent and shall distinguish between those materials ordered on behalf of the Owner without sales tax and any other copies thereof that Project Engineer, or others, may order and pay for which includes sales tax, on its own or their behalf. Forward to the Owner the original vendor's invoice for materials purchased by the Owner and delivered to the A/E as the Owner's agent.

1.1.20 When the project is subject to Texas Commission on Environmental Quality (TCEQ) regulations, Project Engineer shall coordinate all related design efforts, including the civil engineer and landscape Engineer, so that consideration of site design and Best Management Practices (BMP's) are integrated.

1.1.21 Insurance Coverage. The Project Engineer shall carry such professional liability/errors and omissions insurance, covering the services provided under this Agreement and other coverages as further described, acceptable to and approved by the Owner. The fees for such insurance will be at the expense of the Project Engineer. The insurance policy shall remain in force for a period of one (1) year beyond the final completion date. A Certificate of Insurance indicating the expiration date, and existence, of the Project Engineer's insurance coverages is required prior to commencement or continuation of performance of the services under this Agreement. Each request for payment by the Engineer shall include the expiration date of the insurance. Project Engineer shall deliver to Owner replacement certificates not less than thirty (30) days prior to the expiration of any such insurance. If, however, Project Engineer fails to pay any of the renewal premiums for the expiring policies, Owner shall have the right (but not the obligation) to make such payments and set off the amount thereof against the next payment coming due to Project Engineer under this Agreement.

- a) A Certificate of Insurance is required with a minimum limit of \$1,000,000 each claim and \$1,000,000 aggregate. The Certificate shall indicate the expiration date of the Project Engineer's professional liability and errors and omissions insurance. The Certificate is to identify the specific name of the project according to the terms of this Agreement and identify the Board of Regents of Texas State Technical College System as the Project's Owner.
- b) On Site Insurance: For services performed on Owner's premises, the Project Engineer shall furnish to Owner Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement.

Worker's Compensation	Statutory Limits
Employer's Liability	
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 policy limit
Bodily Injury by Disease	\$1,000,000 each employee
Commercial General Liability	\$1,000,000 each occurrence \$1,000,000 aggregate
Business Auto Liability	
Combined Single Limit	\$1,000,000 each occurrence

- c) Notice of Cancellation: Required insurance shall not be cancelable without thirty (30) days' prior written notice to Owner.

1.1.22 Project Engineer shall include the Owner as an additional insured on the General Liability policy, and the Worker's Compensation policy shall include a waiver of subrogation in favor of the Owner.

1.2 Schematic Design Phase

1.2.1 Based on the mutually agreed upon Scope, Construction Cost Limitation and the Project Schedule, the Project Engineer shall prepare sufficient alternative approaches to design and construction of the Project to satisfy Owner's requirements and shall, at completion of this phase, submit Schematic Design Documents in accordance with Owner's Design Guidelines and any additional requirements set forth in Article 14.

1.2.2 Project Engineer shall provide all services necessary to perform the services of this Phase (preparation of Schematic Design Documents) including, without limitation, unless otherwise approved by Owner, the preparation and prompt delivery of all items specified in Owner's RFQ or as otherwise agreed in writing by the parties.

1.2.3 Project Engineer shall work closely with Owner in preparation of schematic drawings and shall specifically conform to Owner's requirements regarding aesthetic design issues.

1.2.4 The Project Engineer shall furnish and deliver to the Owner the number of complete printed sets of Schematic Design documents as enumerated in Article 14.

1.2.5 The Project Engineer shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.1.10 to confirm compliance with the Construction Cost Limitation and include it with the completed Schematic Design Documents. The Project Engineer shall advise the Owner of any adjustments to the project scope necessary to align the cost estimate and the project budget with the established Construction Cost Limitation and revise the Schematic Design Documents as may be required.

1.2.6 Before proceeding into the Design Development Phase, the Project Engineer shall obtain Owner's written acceptance of the Schematic Design documents and approval of the Project Engineer's preliminary construction cost estimate and schedule.

1.3 Design Development Phase

1.3.1 Based on the approved Schematic Design Documents and any adjustments to the Scope or Construction Cost Limitation authorized by the Owner, the Project Engineer shall prepare, for approval by the Owner, Design Development Documents in accordance with Owner's written requirements to further define and finalize the size and character of the Project in accordance with any additional requirements set forth in Article 14.

1.3.2 The Project Engineer shall furnish and deliver to the Owner the number of complete printed sets of Design Development documents as enumerated in Article 14.

1.3.3 The Project Engineer shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.1.10 to confirm compliance with the Construction Cost Limitation and include it with the completed Design Development Documents. The Project Engineer shall advise the Owner of any adjustments to the project scope necessary to align the cost estimate and the project budget

with the established Construction Cost Limitation and revise the Design Development Documents as may be required.

1.3.4 Before proceeding into the Construction Document Phase, the Project Engineer shall obtain Owner's written acceptance of the Design Development documents and approval of the mutually established Construction Cost Limitation and schedule.

1.4 Construction Document Phase

1.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project Construction Cost Limitation authorized by the Owner, the Project Engineer shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications in accordance with Owner's written requirements setting forth in detail the requirements for construction of the Project, including, without limitation, any additional requirements contained in Article 14. The plans, drawings and specifications for the entire Project shall be prepared so that the construction of the building and related facilities, including built-in permanent fixtures and equipment, will cost no more than the Construction Cost Limitation established by Owner. The Project Engineer is responsible for managing the design to stay within the Construction Cost Limitation.

1.4.2 The Project Engineer shall advise the Owner on matters such as construction phasing and scheduling, bid or proposal alternates, special cash allowances, liquidated damages, the construction contract time period, and other construction issues appropriate for the Project.

1.4.3 The Project Engineer shall assist the Owner in connection with the Owner's responsibility and procedures for obtaining approval of all authorities having jurisdiction over the Project.

1.4.4 The Project Engineer shall ensure coordination and inclusion of sequence of operations for all operable systems in the facility.

1.4.5 The Project Engineer, at the Project Engineer's expense, at each stage of review described in Article 14, shall furnish and deliver to the Owner the number of complete printed copies of all plans, drawings and specifications of every character made or furnished in connection with the Work, as enumerated in Article 14, which copies shall become the property of the Owner. The Project Engineer shall incorporate into the plans, drawings and specifications such changes as are necessary to satisfy the Owner's written review comments or published meeting minutes, any of which may be appealed in writing for good cause.

1.4.6 The Project Engineer shall pay for the reproduction of all plans, specifications and other documents for use by the Project Engineer and its consultants and all documents reproduced for the various completion stage reviews (as set forth in Article 14) by the Owner prior to the reproduction of bidding or proposal documents. All other reproduction costs shall be borne by the Owner, provided that all invoices for such reproduction work are billed directly to the Owner, free of state sales taxes, and identified by the Project Engineer as to the project name, number and institution. However, addenda documents issued after the bid documents are reproduced, except for changes generated by Owner, shall be supplied at the Project Engineer's expense.

1.4.7 The Project Engineer shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.1.10 to confirm compliance with the Construction Cost Limitation and include it with the completed Construction Documents. The Project Engineer shall advise the Owner of any adjustments to the project scope necessary to align the cost estimate and the project budget with the established Construction Cost Limitation and revise the Construction Documents as may be required.

1.4.8 Construction document drawings shall be produced on a CADD system as part of Basic Services. The Owner will define the CADD drawing requirements and the final media for the CADD data.

1.4.9 The Project Engineer shall participate in a final review of the Construction Documents with the Owner at the Project location or other location specified by Owner in the State of Texas. Prior to the Owner's approval of the Construction Documents, the Project Engineer shall incorporate such changes as are necessary to satisfy the Owner's review comments.

1.4.10 Before proceeding into the Bidding and Proposal Phase, the Project Engineer shall obtain Owner's written acceptance of the Construction Documents and approval of the mutually established Final Construction Cost Limitation.

1.5 Bidding and Proposal Phase

1.5.1 The Project Engineer shall assist the Owner in obtaining and evaluating bids or proposals, and assist in awarding contracts for construction, including preparation for and attendance at Prebid or Preproposal Conferences and HUB meetings. Project Engineer shall answer inquiries from bidders and proposers at Owner's request, and shall prepare and issue any necessary addenda to the bidding or proposal documents. The Project Engineer shall maintain a register of bid and proposal documents, distribute documents to bidders, proposers, and plan rooms, and obtain and administer deposits.

1.5.2 The Project Engineer shall investigate the responsibility of apparent low bidders or proposers and inform Owner in writing of its findings and recommendations. For proposers selected by qualifications and by competitive sealed proposals, the Project Engineer shall investigate qualifications and other pertinent proposal information and inform the Owner in writing of its findings and recommendations.

1.5.3 In the event the best value proposal received for the Project exceeds the Final Construction Cost Limitation established at the completion of the Construction Document Phase, the Project Engineer, without charge to the Owner, and if so directed by Owner, shall revise the drawings and specifications as necessary to bring the cost of the Project within the Final Construction Cost Limitation. The Owner reserves the right to accept a proposal and award a construction contract that exceeds the Final Construction Cost Limitation, if such award is determined by Owner to be in the Owner's best interest.

1.6 Construction Phase—Administration of the Construction Contract

1.6.1 The Construction Phase shall commence with the award of the Contract for Construction and issuance of (i) a Notice to Commence On-Site Work or (ii) a Notice to Proceed with Construction Services and terminate sixty (60) days after Final Payment to the Contractor is made, or when all of Project Engineer's services have been satisfactorily performed, whichever occurs later.

1.6.2 Project Engineer shall provide administration of the Contract for Construction as set forth below and in the edition of the Owner's Design Guidelines current as of the date of this Agreement.

- a) The Project Engineer shall coordinate with the Contractor to establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records at each Owner's monthly meeting and when requested. The Project Engineer shall manage and execute all Change Orders.

- b) The Project Engineer shall chair all meetings scheduled by the Owner or Project Engineer and shall promptly provide summary notes to all parties. The Project Engineer shall attend Contractor's regularly scheduled planning meetings when requested.

1.6.3 The Project Engineer shall review the Contractor's list of proposed subcontractors for the work, initial administrative submittals for Project Schedule, Schedule of Values, Submittal Schedule, and Equipment Matrix to establish appropriate bases for construction monitoring, payment processing, and system commissioning. The Project Engineer shall identify necessary revisions to the documents in writing to the Contractor and recommend acceptance of the documents by the Owner when appropriate. The Project Engineer shall review periodic updates of all schedules with Owner and Contractor to evaluate appropriateness.

1.6.4 The Project Engineer and its consultants shall prepare appropriate materials for and conduct a Pre-Construction Conference at the site prior to commencement of construction by the Contractor.

1.6.5 The Project Engineer shall be a representative of the Owner during the Construction Phase, and shall advise and consult with the Owner. Instructions to the Contractor shall be forwarded through the Project Engineer. The Project Engineer shall have authority to act on behalf of the Owner to the extent provided in the Contract Documents. Duties, responsibilities and limitations of authority of the Project Engineer shall not be restricted, modified or extended without written acceptance of the Owner.

1.6.6 Site Visits. The Project Engineer shall visit the site at least bi-weekly during the entire construction period to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. Each of Project Engineer's consultants shall visit the site at least bi-weekly during construction activities related to the consultant's discipline to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. Project Engineer and its consultants shall submit written reports of their site visits and meetings. The Project Engineer shall not be required to make exhaustive or continuous onsite visits to inspect the quality or quantity of the Work.

- a) On the basis of the onsite observations, the Project Engineer shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. Project Engineer shall notify Owner and the Contractor in writing of any portions of the work which Project Engineer has observed as not being in conformity with the Construction Documents and make recommendations as to correction of the deficiencies or defects. Project Engineer shall make its site representative available and shall consult with Owner and the Contractor on the occasion of all circumstances arising during the course of construction which would make such consultation in Owner's interests.
- b) In addition to site visits for general inspection and observation, the Project Engineer and its consultants shall visit the site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal inspections of the Work. The Project Engineer and its consultants shall provide written reports of all site visits to the Owner and Contractor.

1.6.7 The Project Engineer shall prepare an agenda for, and conduct monthly job conferences for attendance by representatives of the Contractor, major subcontractors, the Project Engineer and the Owner, and prepare and distribute minutes of the meetings.

1.6.8 The Project Engineer shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Subcontractors or any other

persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

1.6.9 The Project Engineer shall at all times have access to the Work wherever it is in preparation or progress.

1.6.10 The Project Engineer shall determine the amounts owing to the Contractor based on observations of Work placed at the site and on evaluations of the Contractor's Application for Payment, and shall coordinate its review and evaluation with the Owner's representatives, and shall certify Contractor's Application for Payment in an appropriate amount.

1.6.11 The certification of a Contractor's Application for Payment shall constitute a representation by the Project Engineer to the Owner, based on the Project Engineer's observations at the site and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the Project Engineer's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Contractor's Application for Payment); and that the Contractor is entitled to payment in the amount certified. However, the approval of a Contractor's Application for Payment shall not be a representation that the Project Engineer has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Sum.

1.6.12 The Project Engineer shall be the interpreter of the technical requirements of the Contract Documents and the judge of the performance of the work of the Contractor. The Project Engineer shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written recommendations within a reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

1.6.13 Interpretations and recommendations of the Project Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form.

1.6.14 Subject to approval of the Owner, the Project Engineer's decisions in matters relating to artistic effect shall be final if consistent with and reasonably inferable from the intent of the Contract Documents.

1.6.15 The Project Engineer shall have the responsibility and the authority, with appropriate notification to the parties, to reject Work which does not conform to the Contract Documents. Whenever, in the Project Engineer's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Project Engineer will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work will then be fabricated, installed or completed. The Project Engineer shall review construction materials testing and any special testing required and shall provide recommendations for retesting, actions, or any appropriate corrective measures as may be necessary or appropriate based on the results of such tests.

1.6.16 The Project Engineer and its consultants shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work set forth in the Contract Documents, and shall respond to

Contractor's inquiries and questions and provide supplemental information as appropriate. Action on submittals shall be taken with reasonable promptness so as to cause no delay to the Contractor's scheduled progress, but in any event no more than fourteen (14) business days after receipt. The Project Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Project Engineer's review shall not constitute approval of any construction means or methods.

1.6.17 Project Engineer shall clarify and interpret the intent and scope of the Construction Documents and, if necessary or appropriate, issue supplemental documents to amplify or explain portions of the Construction Documents.

1.6.18 Project Engineer shall provide assistance in the review of the Contractor's requests for change orders or claims for additional time or costs, and make recommendations to Owner as to such requests or claims.

1.6.19 The Project Engineer shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents. In conjunction with each Change, the Project Engineer shall prepare an independent cost and time estimate for comparison with the Contractor's proposal and recommend to the Owner whether the proposal is acceptable.

1.6.20 Project Engineer shall prepare revised Contract Drawings, where appropriate, to illustrate and document the work required by approved Change Orders. All proposed changes to drawings plans and specifications, regardless of how initiated, shall be totally defined in the document depicting them as to scope of work added, removed, or changed. The original copies of the Construction Documents maybe revised to show such changes, provided that all such revisions shall be separately recorded on the media acceptable to Owner, including, without limitation, CADD. Such revisions shall be clearly indicated and a current revision date shall be included on the reproducible copy. Changes to the specifications shall be made by consecutively numbered and dated addenda. All changes to design documents or specifications will be identified with date of change, revision number and other customary identification references. Areas changed on drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.

1.6.21 Project Engineer and its consultants shall conduct and participate in Substantial Completion or pre-Final work observations to determine the Dates of Substantial Completion, and Final work observation. In association with each observation, Project Engineer and its consultants shall prepare a list of items which Project Engineer and its consultants have observed as deficiencies in the Work, requiring remedial work or replacement, assemble and distribute the official punch(s) to all affected parties, and thereafter review the corrected and/or replaced work and assist in verification of correction of all items.

1.6.22 Project Engineer shall review, for conformance with the Contract Documents, Contractor's submission of guarantees and warranties.

1.6.23 The Project Engineer and its consultants shall assist the Owner in checking as-built drawings during the course of the Work in association with certifying progress payments and shall review as-built documents for completeness and compliance with Contract requirements at Substantial Completion and at Final Completion of the Project.

1.6.24 Project Engineer shall receive and review Contractor's submission of record drawings, operating and maintenance instructions, and all manuals, brochures, drawings, and other close-out

documentation furnished by the Contractor, shall require necessary revisions to same, and when acceptable under the terms of the Contract between Owner and Contractor, shall forward to Owner. The Project Engineer shall certify final payment to the Contractor when the requirements of the Contract between Owner and Contractor have been met.

1.6.25 Project Engineer shall monitor the Contractor's schedule for the construction phase work and assist the Owner in reviewing all relevant activities and advise the Owner of the Contractor's scheduled progress.

1.6.26 Project Engineer shall provide a milestone schedule that is acceptable to the Owner and shall be submitted on a monthly basis prior to submission of construction payment application, in conformance with the project milestone schedule, so that the desired development and construction schedule for the Project shall be maintained.

1.6.27 The Project Engineer shall be available after final payment to advise the Owner regarding Warranty items and to inspect Warranty work during the Warranty period. Project Engineer shall participate in the Project's one year warranty review.

1.7 Additional Services

1.7.1 Additional Services are those services which shall be provided if authorized or confirmed in writing by the Owner and for which compensation will be provided as described in this Agreement in addition to Basic Compensation. Prior to commencing any Additional Service, Project Engineer shall prepare for acceptance by the Owner an Additional Services Proposal, in the form attached hereto as an Exhibit, or other format as directed by Owner, which shall describe in detail the nature or scope of the Additional Services, the basis upon which Project Engineer has determined that such service are Additional Services, and which shall set forth the maximum amount of fees and reimbursable expenses for which Project Engineer is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Service. Those services which the Owner contemplates to be provided as Additional Services or considered to be Additional Services are described in Article 14. Project Engineer shall proceed only after written acceptance by Owner of the Additional Services Proposal.

1.7.2 Upon acceptance by Owner, each Additional Services Proposal and the services performed by Project Engineer pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a Basic Service at the original execution of this Agreement.

1.7.3 Providing services to make detailed investigations of existing conditions or facilities or to make measured drawings of them is an Additional Service except as reasonably necessary to verify the accuracy and completeness of drawings or other information furnished by the Owner and to the extent necessary for the Project Engineer to complete its responsibilities hereunder free of material errors and omissions. Project Engineer shall not be required to perform any destructive testing or to hire the services of a surveyor unless agreed to as an Additional Service.

1.8 Time

1.8.1 Project Engineer shall perform all of Project Engineer's services described herein as expeditiously as is consistent with (1) Project Engineer's best professional efforts, skill and care, to or above the degree of the standard of care exercised by Professional Engineers in the State of Texas", (2) the orderly progress of such services, and (3) in conformance with the project milestone schedules so that the desired development and construction schedule for the Project shall be maintained. Project Engineer

shall at all times provide sufficient personnel to accomplish Project Engineer's services within the time limits set forth in the schedules described herein.

1.8.2 Attached hereto is an Exhibit containing a schedule for completion of each of the phases of services to be performed by Project Engineer pursuant to this Agreement. Supplemental activities shown on the schedule, and any associated dates not yet defined, shall be determined at the completion of the Program Phase or at such time when both parties mutually agree that the project is sufficiently developed and documented. Changes in this schedule may be made only with the written approval of Owner. Project Engineer shall perform all of its services in accordance with the then-current schedule approved by Owner.

1.8.3 Project Engineer shall provide an updated design milestone schedule that is acceptable to the Owner and shall be submitted on a monthly basis prior to submission of the Engineer's design phase payment application, in conformance with the design project milestone schedule, so that the desired design schedule for the Project shall be maintained.

Article 2 Owner's Responsibilities

2.1 The Owner and Project Engineer shall prepare a Scope. The Scope will set forth the Owner's description of the project scope, preliminary project cost, schedule, criteria for design objectives, characteristics and constraints, If Project Engineer prepares the Scope, then Owner will review the Scope when completed and , when the Scope is approved, will authorize commencement of Basic Services.

2.2 The Owner will provide a preliminary project budget and schedule for the Project. The budget will include the Construction Cost Limitation, contingencies for bidding and changes in the Work during construction, and other costs which are the responsibility of the Owner.

2.3 The Owner designates the Rosie Smiley, P.E., Assistant Director, Physical Plant as its representative authorized to act in the Owner's behalf with respect to the Project. The Owner's authorized representative shall examine the documents submitted by the Project Engineer and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Project Engineer's services. The Vice President for Administrative Services is also designated as the Owner's representative for the purpose of administering this contract, including determination of fees earned by the Project Engineer and equitable back charges against the Project Engineer. The Owner shall have the right to withhold from payments due Project Engineer such sums as the Owner deems reasonably necessary to protect Owner against any loss or damage which may result from negligence by Project Engineer or failure of Project Engineer to perform Project Engineer's obligations under this Agreement pending final resolution of such claims.

2.4 The Owner shall arrange and pay for structural, mechanical, chemical and other laboratory tests as necessary during construction except as required of the Contractor in the Contract Documents.

2.5 If the Owner observes or otherwise acquires actual knowledge of any design fault or defect in the Project or conflict in the Contract documents, written notice thereof will be given by the Owner to the Project Engineer; however, Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

2.6 The Owner will review the Project Engineer's design at the completion of Schematic Design and Design Development and at completion of the stages of Construction Documents as described in Article 14. Comments concerning corrections or amendments to the plans and specifications will be furnished in writing to the Project Engineer as promptly as possible after receipt of the documents for review. Owner's approval of the documents must be in writing and no approval may be deemed given in the absence of written approval. The Owner may require the Project Engineer to halt production during design review.

2.7 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Project Engineer's services and of the Work.

2.8 At the time the Construction Documents are issued for construction bids/proposals, the Owner shall prepare a statement calculating the Project Engineer's fees for the Project based upon the provisions of this Agreement and any adjustments to the fee calculation mutually agreed to during design. If Project Engineer objects to the revised project fees, Project Engineer must notify the Owner of its objections in writing within fourteen (14) days of receipt of the fee statement otherwise Project Engineer's approval of the fee amounts shall be deemed given.

2.9 The Owner shall furnish one or more Construction Inspectors who shall be responsible for inspection of the Work, consisting of close, on-site examination of the materials, structure and equipment; and surveillance of the workmanship and methods used to insure that the Project is reasonably accomplished in accordance with the Contract Documents and good construction practices.

Article 3 Construction Cost—Definition

3.1 The Estimated Construction Cost shall be the total cost of all elements of the project, including all alternate bids or proposals, designed and specified by the Project Engineer.

3.2 The Estimated Construction Cost shall include at current market rates a reasonable allowance for overhead, profit and general conditions, the cost of labor and materials furnished by the Owner and any equipment which has been shown in the plans, specified, and specially provided for by the Project Engineer.

3.3 The Estimated Construction Cost does not include compensation to the Project Engineer and the Project Engineer's consultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the Owner as provided in Article 2.

Article 4 Direct Salary Expense

4.1 Direct Salary Expense ("DSE") is defined as the actual salaries, expressed on an hourly wage basis, prior to deductions for employment taxes (such as FICA, Medicare, income tax withholding) and employee-paid benefits, of all personnel, including Project Engineer's employees directly engaged on the Project (and performing consultations or research or preparing designs, drawings, and specifications for the Project). DSE shall exclude mandatory and customary fringe benefits and employee benefits (such as employer-paid insurance, sick leave, holidays, vacation, pensions and similar contributions, or additions such as bonuses or other surplus payments), overhead expense (which includes salaries of bookkeepers, secretaries, clerks, and the like), and profit relating to the Project. Any multiplier applied to such DSE shall be for the purpose of covering such fringe benefits, expense, and profit. All personnel shall mean anyone employed by the Project Engineer and its consultants including, but not limited to, Engineers, officers, principals, associates, project Engineer, CADD technicians, engineers, designers, job

captains, draftspersons, and specifications writers, who are performing consultation, research or design, or who are producing drawings, specifications, plans, or other documents pertaining to the Project, or who are performing services during construction at the Property that are directly attributable to, and necessary for, such construction.

4.2 Prior to entering into any agreement between the Project Engineer and the Owner, and the Project Engineer and its consultants, the Project Engineer shall submit a full list of all personnel titles and the hourly wage for each which is attached hereto as an Exhibit. The hourly rates contained therein may be adjusted semi-annually in accordance with the usual and customary salaries of the Engineering profession in the area of Project Engineer's office.

Article 5 Reimbursable Expenses

5.1 Reimbursable Expenses are in addition to the Compensation for Basic Services and Additional Services. These include actual out-of-pocket reasonable expenditures made by the Project Engineer and the Project Engineer's employees and consultants incurred solely and directly in connection with Project Engineer's performance of its services hereunder for the following expenses:

- 5.1.1 Fees paid for securing approval of authorities having jurisdiction over the Project.
- 5.1.2 Professional models and renderings produced for presentations when requested by the Owner.
- 5.1.3 Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project except for: correspondence between the Project Engineer and the Owner; Project Engineer's in-house work or correspondence; or work or correspondence exchanged between the Project Engineer and its consultants.
- 5.1.4 Expense of any additional insurance coverage or limits that exceed those required by this Agreement, when requested by the Owner.
- 5.1.5 Expense of transportation and living expenses in connection with out-of-state travel as follows:

a) **Travel from Texas to out of state locations:**

Maximum rates for lodging and meals shall be in accordance with the "Out of State Meals and Lodging Rates", Texas Comptroller of Public Accounts. (Website; https://fm.xcpa.state.tx.us/fm/travel/out_of_state/index.php plus city and state taxes.

(1) Notwithstanding the limitation on lodging rates above, if the expenses actually incurred by the Service Provider for lodging exceed the State rate, the Service Provider may be reimbursed for the additional amount incurred up to a maximum of forty percent (40%) of the State rate.

(2) The meal per diem will only be paid on trips involving overnight travel.

b) **Travel to Texas from out of state locations:**

(1) Lodging: maximum reimbursement for lodging in state shall be limited to current State of Texas per diem rate plus city and state taxes. The meal per diem will only be paid on trips involving overnight travel.

(2) Notwithstanding the limitation on lodging rates above, if the expenses actually incurred by the Service Provider for lodging exceed the State rate, the Service Provider may be reimbursed for the additional amount incurred up to a maximum of forty percent (40%) of the State rate.

(3) Meals; reimbursement limited to current State of Texas per diem rate.

- c) **Automobile Expenses:** auto rental for moderate size category, related auto insurance, gasoline, parking and taxi service. Costs include applicable taxes.
- d) **Airline Travel:** coach class air travel with rates nearest to the State contract rate. All airline travel shall be booked no less than 7 days in advance when possible. Reimbursement for air travel booked within 7 days of departure, without the prior approval of the PM/RCM, may be limited. A sales receipt and a boarding pass must be provided for each flight in order to receive reimbursement.
- e) **Approval:** Unless expressly directed and approved “in writing” by the Owner, amounts exceeding the above stipulated limitations will not be subject to reimbursement.

5.1.6 Expenses of any reprographic services that are in addition to those required under Basic Services requested by the Owner in writing, including, but not limited to reproduction and delivery of plans, specifications, addenda, reports or other miscellaneous documents. Reprographic services may include electronic document files or paper printing and delivery. Authorized additional reprographic services that are not provided in-house by the Project Engineer shall be procured in the following manner:

- a) Project Engineer shall develop a complete scope of services fully describing the services to be provided by the reprographic vendor. The Project Engineer shall submit the scope of services to and request bids from at least three reprographic vendors, including at least one woman owned HUB firm and one minority owned HUB firm. For services projected to be less than \$25,000, three bids procured by telephone are acceptable. For services anticipated to be greater than \$25,000, three written bids are required. An updated HUB Subcontracting Plan (HSP) reflecting the new scope of work shall be submitted to the HUB Coordinator for approval.
- b) Reprographic services vendor shall provide, as a minimum, the following information in its bid proposal to the Project Engineer:
 - (1) Its ability to handle projected volume on given schedule.
 - (2) Its ability to receive and warehouse Project Engineer’s electronic document files.
 - (3) Its ability to manage bid document deposit process.
 - (4) Its ability to print partial document sets as directed by Project Engineer.
- c) Project Engineer shall provide written confirmation attesting to the competitive nature of the procurement.
- d) A written Owner’s request is required for reimbursement of these expenses.

5.2 Unless expressly directed, and approved in advance, by the Owner, transportation and living expenses incurred within the State of Texas, for firms whose principal address is within the State of Texas, will not be subject to reimbursement.

5.3 Expenses not allowed for reimbursement include the cost of review documents required to be provided to the Owner under Article 14, telephone charges, FAX service, alcoholic beverages, laundry, valet service, entertainment or any non-project related items. All tips must be included within the per diem allowances.

5.4 Owner shall pay a mark-up not to exceed ten percent (10%) on those reimbursables identified in 5.1.1 through 5.1.4 above. A mark-up shall not be paid on lodging, meals or travel expenses. Engineer shall submit receipts for all reimbursable expenses along with any reimbursement request.

Article 6 Basis of Compensation

The Owner shall compensate the Project Engineer for the services provided in accordance with Article 7. Payments to the Project Engineer, and other terms and conditions of this Agreement, as follows:

6.1 Basic Services Fee

6.1.1 For Basic Services, as described in Article 1, and including all disciplines identified in Article 14.1 as part of Basic Services, Project Engineer's Basic Fee shall be calculated as follows:

The Final Construction Cost Limitation (see Paragraph 1.4.11) times the agreed fee percentage (see paragraph 14.4) equals Basic Services Fee

6.1.2 The Project Engineer's Basic Services Fee will be based on the Final Construction Cost Limitation regardless of whether the actual contract award for construction, less special cash allowances and construction contingency, is more or less than the Final Construction Cost Limitation provided that the resulting fee, when expressed as percentage of the actual contract award cost, shall not exceed the maximum percentage fee established by the Board of Regents, or any other limitations imposed by law.

6.1.3 In multi-stage projects, the basic services fee for each Construction Contract Stage (CCS) shall be calculated multiplying the Sub-Construction Cost Limitation for the CCS times the agreed fee percentage for the Basic Services Fee established in paragraph 14.5. The Project Engineer's total Basic Services Fee will be the sum of the basic services fees for all CCSs. The total Basic Services Fee shall not exceed the maximum fee allowed as a percentage of the Final Construction Cost Limitation interpolated from the appropriate Board of Regents table.

6.1.4 If the description of the Project Engineer's Basic Services is changed materially, the applicable fee percentage shall be adjusted equitably, subject to the maximum fee limitations established by the Board of Regents.

6.2 Fees for Changes in Project Scope

6.2.1 For reductions in the scope of the Work of the Project that occur after commencement of the Construction Documents Phase but before establishment of the Final Construction Cost Limitation, the Project Engineer's fee for basic services related to the eliminated portion of the work, to the extent such services are provided, shall be calculated using the same percentage fee used to establish the Basic Services Fee times the lowest bona fide bid or negotiated proposal for the eliminated scope of Work or, if

no bid or proposal is received, an up-to-date detailed Construction Cost Estimate for the eliminated scope of Work, but only to the extent that services for the eliminated scope of Work were performed.

6.2.2 For increases in the scope of Work of the Project that occur after establishment of the Final Construction Cost Limitation, the fee for the additional Basic Services required will be calculated using the same percentage fee used to establish the Basic Services Fee times the lowest bona fide bid or negotiated proposal for the added scope of Work or, if no bid or proposal is received, an up-to-date detailed Construction Cost Estimate for the added scope of Work, but only to the extent that services for the added scope of Work are required.

6.3 Fees for Change Order Services

If revised construction documents are required due to material changes ordered by the Owner and not due to errors and omissions on the part of the Project Engineer, the fee for the additional Basic Services required will be calculated using the same percentage fee used to establish the Basic Services Fee times the lowest bona fide bid or negotiated proposal for the changes to the Work or, if no bid or proposal is received, an up-to-date detailed Construction Cost Estimate for the changes to the Work, but only to the extent that services for the changes to the Work are required.

6.4 Additional Services

6.4.1 Fees for Additional Services, including any services identified in Article 14.2 are in addition to the Basic Services Fee described above.

6.4.2 For additional services of the Project Engineer that are not Basic Services or additional Basic Services due to changes in Project scope, the Project Engineer's fee shall be calculated as follows.

6.4.3 The fees for Additional Services will be negotiated by the Owner and the Project Engineer as the scope of the Additional Services is defined and shall be calculated in one of the following ways:

- a) A pre-established lump sum amount;
- b) An agreed percentage of the Final Construction Cost of the Work resulting from the service being provided; or;
- c) On an hourly basis for time expended at an amount not to exceed 3.0 times the direct salary expense for all personnel directly involved in providing the service.

6.4.4 In the absence of an agreement between the Owner and the Project Engineer, the fees for Additional Services shall be calculated on an hourly basis.

6.4.5 For additional services of the Project Engineer's consultants that are not Basic Services or additional Basic Services due to changes in Project scope, the Project Engineer's fee shall be calculated as an amount not to exceed .10 times the amount that the consultant bills the Project Engineer for the additional services. The consultant's fee for the additional services shall be calculated in the same manner as described above.

6.5 Reimbursable Expenses

For reimbursable expenses, as described in Article 5, and any other items included in Article 14 as Reimbursable Expenses, the Project Engineer's reimbursement shall be calculated as an amount not to exceed 1.10 times the amounts actually expended by the Project Engineer, the Project Engineer's employees and consultants in the interest of the Project.

Article 7 Payments to the Project Engineer

7.1 Payments for Basic Services

7.1.1 Payments for Basic Services shall be made at the end of each Phase of services or, with the Owner's approval, monthly and shall be in proportion to services performed within each Phase of services, as demonstrated by work product, on the basis set forth in Article 6. The form of Statement for Architectural/Engineering Services to be utilized is attached hereto as Exhibit D and Attachments H and I to Exhibit D, which concern payments planned and payments made to Historically Underutilized Businesses.

7.1.2 No partial payment made shall be, or construed to be, final acceptance or approval of the services to which the partial payment relates, or a release of Project Engineer of any of Project Engineer's obligations or liabilities with respect to such services.

7.1.3 Project Engineer shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.

7.1.4 Project Engineer shall submit a request for final payment to the Owner within thirty days after approval of the final payment to the Contractor.

7.1.5 The acceptance by Project Engineer, or Project Engineer's successors, of final payment under this Agreement shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which Project Engineer, or Project Engineer's successors, have or may have against Owner under the provisions of this Agreement except those claims previously made in writing and identified by Project Engineer as unsettled at the time of the final request for payment. For purposes of Texas Government Code 2251.021, the date the performance of service is completed is the date when the Owner's representative approves the invoice.

7.1.6 For purposes of Texas Government Code 2251.021, the date the performance of service is completed is the date when the Owner's representative approves the invoice. Payment of invoices shall be made within 30 days of Owner's approval.

7.2 Payments for Additional Services and Reimbursable Expenses

Payments for the Project Engineer's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Project Engineer's valid statement of services rendered or expenses incurred as approved by Owner. Invoices shall include complete documentation of all expenses.

7.3 Payments Withheld

7.3.1 Under no circumstances shall the Owner be obligated to make any payment (whether a progress payment or final payment) to Project Engineer if any one or more of the following conditions precedent exist:

- f) Project Engineer is in breach or default under this Agreement;

- g) Any portion of a payment is for services that were not performed in accordance with this Agreement provided, however, payment shall be made for those services which were performed in accordance with this Agreement;
- h) Project Engineer has failed to make payments promptly to consultants or other third parties used in connection with services for which Owner has made payment to Project Engineer;
- i) If Owner, in its good faith judgment, determines that the balance of the unpaid fees are not sufficient to complete the services in accordance with this Agreement; or
- j) Project Engineer has failed to achieve a level of performance necessary to maintain the project schedule.

7.3.2 No deductions shall be made from the Project Engineer's compensation on account of liquidated damages or other sums withheld from payments to Contractors or on account of the cost of changes in the Work other than those for which the Project Engineer may be liable.

Article 8 Project Engineer Accounting Records

8.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a Multiple of Direct Salary Expense shall be kept on the basis of Generally Accepted Accounting Principles and shall be available to the Owner or the Owner's authorized representative at mutually convenient times for a period of at least three (3) years after final completion of the Project. Owner shall have the right to verify the details set forth in Project Engineer's billings, certificates, and statements, either before or after payment by (1) inspecting the books and records of Project Engineer during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Project Engineer's business employees; (4) visiting the Project site; and (5) other reasonable action.

8.2 Engineer shall submit a notarized statement documenting that the Direct Salaries stated on Exhibit C comply with the definition for Direct Salary Expense under Article 4 Direct Salary Expense and that any multiplier applied to DSE on Exhibit C complies with the definition for DSE under Article 4 Direct Salary Expense. Engineer/Engineer shall break down the multiplier under Article 4 for the purpose of fringe benefits, expense, and profit to justify the multiplier up to a maximum of 3 allowed under Article 6.2.

8.3 Records of Project Engineer costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for three years after final Payment or abandonment of the Project, unless Owner otherwise instructs Consultant in writing.

Article 9 Ownership and Use of Documents

9.1 Drawings and Specifications as instruments of service are and shall remain property of the Project Engineer whether the Project for which they are made is executed or not. The Owner shall be permitted to retain copies, including reproducible copies, of Drawings and Specifications for information and reference in connection with the Owner's use and occupancy of the Project. Owner shall have an irrevocable, paid-up, and perpetual non-exclusive license and right, which shall survive the termination of this agreement, to use the Drawings and Specifications, including the originals thereof, and the ideas and designs contained therein, for any purpose, regardless of whether Project Engineer remains as the Project Engineer, has resigned, this Agreement has been terminated, Project Engineer's scope of services has been modified, or the services herein have been completed. If this Agreement is terminated, Project Engineer

hereby consents to the employment by Owner of a substitute Project Engineer to complete the services under this Agreement, with the substitute Project Engineer having all of the rights and privileges of the original Engineer. The Project Engineer and its consultants shall not be liable for any changes made by the Owner to the Drawings or Specifications (including Drawings or Specifications provided in CADD or other electronic format) or for claims or actions arising from any such changes on projects in which the Project Engineer is not involved.

9.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not be construed as publication in derogation of the Engineer's rights.

Article 10 Termination of Agreement

10.1 This Agreement may be terminated by either party upon seven days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination and such failure is not fully cured prior to the expiration of such seven day period.

10.2 This agreement may be terminated at any time by the Owner for its convenience upon at least seven days' written notice to the Project Engineer.

10.3 In the event of termination not the fault of the Project Engineer, the Project Engineer shall be compensated for all services satisfactorily performed to the termination date, together with approved Reimbursable Expenses then due, provided Project Engineer shall have delivered to Owner such statements, accounts, reports and other materials as required by Paragraph 10.5 below together with all reports, documents and other materials prepared by Project Engineer prior to termination.

10.4 A termination under this Article shall not relieve Project Engineer or any of its employees of liability for violations of this Agreement, or any willful, negligent or accidental act or omission of Project Engineer. The provisions of Article hereof shall survive the termination of this Agreement. In the event of a termination under this Article, Project Engineer hereby consents to employment by Owner of a substitute Project Engineer to complete the services under this Agreement, with the substitute Project Engineer having all rights and privileges of the original Project Engineer of the Project.

10.5 As of the date of termination of this Agreement, Project Engineer shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by Project Engineer in connection with Project Engineer's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise.

Article 11 Successors and Assigns

The Owner and the Project Engineer, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, permitted successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. This Agreement is a personal service contract for the services of Project Engineer, and Project Engineer's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. The benefits and burdens of this Agreement are, however, assignable by Owner.

Article 12 Extent of Agreement

This Agreement supersedes all prior agreements, written or oral, between Project Engineer and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the

subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Owner and Project Engineer.

Article 13 Miscellaneous Provisions

13.1 **Captions.** The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

13.2 **Governing Law.** This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas, without giving effect to principles of conflicts of laws

13.3 **Waivers.** No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

13.4 **Severability.** In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

13.5 **Independent Contractor.** Project Engineer acknowledges that it is engaged as an independent Contractor and that Owner has no responsibility to provide Project Engineer or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Project Engineer is not, and will not claim to be, an officer, partner, employee or agent of Owner and shall not make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Project Engineer hereby agrees to make Project Engineer's own arrangements for any of such benefits as Project Engineer may desire and agrees that Project Engineer is responsible for all income taxes required by applicable law.

13.6 **Child Support Certification.** Pursuant to Section 231.006, *Texas Family Code*, Project Engineer certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

13.7 **Eligibility Certification.** Pursuant to Section 2155.004, *Texas Government Code*, Project Engineer certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

13.8 **Franchise Tax Certification.** If a corporation or limited liability company, Project Engineer certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

13.9 **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.093, *Texas Government Code*, Project Engineer agrees that any payments owing to Project Engineer under this Agreement may be applied directly toward any debt or delinquency that Project Engineer owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

13.10 **Loss of Funding.** Performance by Owner under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of Texas State Technical College (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to Project Engineer and Owner may terminate this Agreement in accordance with Article 10. Project Engineer acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.

13.11 **Proprietary Interests.** All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Project Engineer in the performance of services for Owner, which is not generally known to the public, shall be confidential. Project Engineer shall not, beginning on the date of first association or communication between Owner and Project Engineer and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Project Engineer's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Project Engineer shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Project Engineer as an independent Contractor of Owner in connection with the Project, or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of Owner. Project Engineer shall obtain assurances similar to those contained in this Subparagraph from persons, vendors and consultants retained by Project Engineer. Project Engineer acknowledges and agrees that a breach by Project Engineer of the provisions hereof will cause Owner irreparable injury and damage. Project Engineer, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

13.12 **Appointment.** Owner hereby expressly reserves the right from time to time to designate by notice to Project Engineer a representative to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. Project Engineer shall act only upon instructions from such representative unless otherwise specifically notified to the contrary.

13.13 **Dispute Resolution.** To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by Owner and Project Engineer to attempt to resolve any claim for breach of contract made by Project Engineer:

- a) Project Engineer's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Project Engineer shall submit written notice, as required by subchapter B of Chapter 2260, to Owner in accordance with the notice provisions in this Agreement. Project Engineer's notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that Owner allegedly breached, the amount of damages Project Engineer seeks, and the method used to calculate the damages. Compliance by Project Engineer with subchapter B of Chapter

2260 is a required prerequisite to Project Engineer's filing of a contested case proceeding under subchapter C of Chapter 2260. The Vice President of Administrative Services of Owner, or such other officer of Owner as may be designated from time to time by Owner by written notice thereof to Project Engineer, shall examine Project Engineer's claim and any counterclaim and negotiate with Project Engineer in an effort to resolve such claims.

b) If the parties are unable to resolve their disputes under subparagraph (a) of this section, the contested case process provided in subchapter C of Chapter 2260 is Project Engineer's sole and exclusive process for seeking a remedy for any and all of Project Engineer's claims for breach of this Agreement by Owner.

c) Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Agreement by Owner nor any other conduct, action or inaction of any representative of Owner relating to this Agreement constitutes or is intended to constitute a waiver of Owner's or the state's sovereign immunity to suit and (ii) Owner has not waived its right to seek redress in the courts.

13.13.1 The submission, processing and resolution of Project Engineer's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended

13.13.2 Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Project Engineer, in whole or in part. Owner and Project Engineer agree that any periods set forth in this Agreement for notice and cure of defaults are not waived, delayed, or suspended by Chapter 2260 or this section.

13.13.3 It is agreed that such process is not invoked if Owner initiates the dispute by first bringing a claim against Project Engineer, except at Owner's sole option. If Owner makes a claim against Project Engineer and Project Engineer then makes a counterclaim against Owner as a claim under Chapter 2260 and in compliance therewith, the Owner's original claim against Project Engineer does not become a counterclaim and is not subject to the mandatory counterclaim provisions of Chapter 2260 of the *Texas Government Code*, except at the sole option of the Owner.

13.14 **Notices.** All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner: Texas State Technical College
Attn: Rosie Smiley

With Copies to: Selby Holder, Kevin Dorton

If to Project Engineer: TBD _____
[Street Address]

Suite _____
_____, _____ [zip code]
Attention: _____

or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

13.15 **Authority to Act.** Project Engineer warrants, represents, and agrees that (1) it is a duly organized and validly existing legal entity in good standing under the laws of the state of its incorporation or organization; (2) it is duly authorized and in good standing to conduct business in the State of Texas; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and (4) the individual executing this Agreement on behalf of Project Engineer has been duly authorized to act for and bind Project Engineer.

13.16 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed, construed and considered to be an original, but all of which shall constitute one and the same instrument.

13.17 **Ethics Matters; No Financial Interest.** Project Engineer and its employees, agents, representatives and consultants have read and understand TSTC's Conflicts of Interest Policy available at and <http://iam.tstc.edu/users/cop/COP2.48-01-05-12.pdf> applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Engineer nor its employees, agents, representatives or consultants will assist or cause TSTC employees to violate TSTC's Conflicts of Interest Policy or applicable state ethics laws or rules. Project Engineer represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

Article 14 Other Conditions or Services

The Owner and Project Engineer hereby agree to the full performance of the covenants contained herein.

14.1 **Basic Services.** The Project Engineer's Basic Services are those services described in paragraphs 1.2 through 1.6 for which compensation is provided as Basic Compensation in this Agreement and shall include the following disciplines:

- a. Civil Engineering Services
- b. Structural Engineering Services
- c. Mechanical Engineering Services
- d. Electrical Engineering Services
- e. Plumbing Engineering Services

14.2 **Additional Services.** The services identified in the following list are not included in Basic Services.

14.2.3 **HAZARDOUS MATERIAL ABATEMENT SERVICES.** The Project Engineer shall employ a Hazardous Material Abatement consultant, from the list of firms included in an attached Exhibit,

to provide hazardous material abatement expertise (including, but not limited to, asbestos and lead) through the Facility Program, Schematic Design, Design Development, Construction Document and Construction Administration Phases. This shall include reviewing Owner provided surveys, making recommendations for any additional surveys required, providing design and cost alternatives regarding hazardous material abatement, preparing plans and specifications to include abatement in the general construction scope of work, providing a licensed individual to monitor hazardous material removal as required by State and EPA guidelines, and preparing a final abatement report. Compensation for these services shall be in addition to the percentage based fee for Basic Services. Therefore, the construction cost of the abatement work will not be included in the basis for the Project Engineer's Basic Services fee. Following selection, the Project Engineer shall provide the Owner with a written itemized cost proposal to provide the above Hazardous Material Abatement Consulting services, including coordination of the Project Engineer. The Owner will review the Project Engineer's proposal for these services in accordance with the Professional Services Procurement Act.

14.2.4 TPDES CONSULTANT. The Project Engineer shall employ a qualified Consultant (the "TPDES Consultant"), experienced in the Texas Pollutant Discharge Elimination System (TPDES) requirements and in the best management practices used at construction sites to control erosion and sediment, to prevent the discharge of pollutants and to prevent or mitigate the impacts of storm water runoff on water quality (collectively "BMPs"), which TPDES Consultant shall be approved in writing in advance by Owner, to provide expertise with respect to Texas Commission on Environmental Quality regulations and BMPs through all phases of the Project. The TPDES Consultant's services shall include, without limitation, (1) recommending structural and non-structural BMPs to Project Engineer or other subcontractors under this Contract for civil and landscape site coordination, (2) preparing of Storm Water Pollution Prevention Plans (SWPPPs) including any BMP drawings and details (3) as requested in writing by Owner, assisting in the updating of SWPPPs and all other permit documentation required by the TCEQ for the Project, and (4) the drafting of technical specifications governing the Contractor/Contractor's obligations under the applicable TPDES regulations and the TCEQ General Permit for Storm Water Discharges From Construction Sites ("General Permit") No. TXR 150000 and governing the Contractor/Contractor's recommended courses of action under BMPs. The TPDES Consultant shall insure that the storm water pollution prevention plan has been prepared for the site in accordance with the General Permit and that such plan complies with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits, including, without limitation, any TPDES permit issued to The University of Texas component on which the site is located. The TPDES Consultant, through Project Engineer, shall determine whether General Permit coverage is required, and, if so, shall advise Owner of Owner's obligations under the General Permit and shall advise Owner of the Contractor/Contractor's obligations under the General Permit. If there are multiple projects proposed to be conducted concurrently in contiguous areas and general permit coverage is required, the TPDES Consultant shall advise Owner of Owner's obligations and prepare one SWPPP for the entire area encompassing all projects and shall amend such SWPPP at the request of Owner to insure that the Contractor/Contractors of each project can comply with TPDES requirements and BMPs. PROJECT ENGINEER HEREBY INDEMNIFIES AND HOLDS HARMLESS OWNER FROM ANY AND ALL LIABILITY, LOSS, DAMAGE, COST, AND EXPENSE ARISING OUT OF A VIOLATION OF THE APPLICABLE TCEQ TPDES REGULATIONS, BMPs, THIS PARAGRAPH OF THIS AGREEMENT, OR THE TERMS AND CONDITIONS OF THE GENERAL PERMIT TO THE EXTENT ATTRIBUTABLE TO A WILLFUL, NEGLIGENT OR ACCIDENTAL ACT OR OMISSION OF PROJECT ENGINEER OR ITS CONSULTANTS.

14.2.7 DRAWINGS AND SPECIFICATIONS. Project Engineer shall revise the drawings and specifications upon Final Completion of the construction, to incorporate all Addenda, all Change Orders for the Work and any modifications recorded by the Contractor on the As-Built Drawings and Specifications

maintained at the job site. The Project Engineer shall label the revised drawings and specifications as “Record Drawings” and “Record Specifications” and shall deliver copies to the Owner for record purposes, as follows:

- Record Specifications: Provide one (1) bound hard copy set and one (1) electronic set of the fully conformed record specifications incorporating all changes and as-built conditions on CD or DVD in PDF format.
- Record Drawings: Provide one (1) complete bound print set of record drawings, and one (1) complete electronic set of the full record drawings incorporating all changes and as-built conditions on CD or DVD.
- All CADD drawing files shall be in AutoCAD DWG format compatible with the latest version of AutoCAD.
- Drawings should be bundled using AutoCAD’s “Pack-n-go” or “e-Transmit” utility to organize files in the root directory of the CD. All Drawing files must be listed before the support files and must include all required support files, such as Xrefs, Fonts, Image files and Print files. Do not put files in directories; all files must be in the root directory.

14.2.10 **SPECIALIZED CONSULTANTS.** The specialized consultant services identified in the following list are included in Additional Services:

- Hazardous Materials Handling Services
- Traffic Control Planning Services

14.2.12 **SPECIALIZED SERVICES.** The specialized consultant services identified in the following list are included in Additional Services:

- Providing services to make detailed investigation of existing conditions or facilities or to make measured drawings thereof, other than to verify the accuracy of drawings or other information furnished by the Owner.

14.3 **Owner Provided Services.** The services identified in the following list will be provided by the Owner at Owner’s expense.

- Surveying Services
- Geotechnical Services
- Code Check
- Plan Check
- Existing Facility Surveys
- Integrated Scheduling
- Hazardous Materials Surveying and Abatement

14.4 **Basis of Compensation**

14.4.1 Basic Services.

The initial Construction Cost Limitation (CCL) for the Project is

_____ (\$_____).

Therefore, the Basic Services Fee for the Project shall be

$$\frac{\text{TBD}}{\text{Construction Cost Limitation}} \times \frac{\text{X}}{\text{Fee \%}} = \$ \frac{\text{Basic Services Fee}}{\text{Basic Services Fee}}$$

If the Construction Cost Limitation is revised prior to acceptance of the construction contractor's competitive sealed proposal or construction manager's guaranteed maximum price, the Basic Services Fee will be adjusted based on interpolation of the following schedule:

Over \$	%
Over \$	%
Up to \$	%

The Owner may amend the CCL after the Project Engineer completes the Facilities Program and the Owner authorizes the commencement of Basic Services. If the CCL is amended by Owner, and Project Engineer has been notified in writing of such CCL, then this paragraph of this Agreement shall be deemed to be amended by including such CCL amount as the cost referenced to in the first sentence of this paragraph of this Agreement. The CCL will be confirmed or re-established at the completion of the Design Development Phase.

14.4.2 Reimbursable Expenses.

The maximum allowable cost on this Project for Reimbursable Expenses associated with Basic Services, identified in Article 5, as approved by the Owner is:

Maximum Reimbursable Expense Amount: \$ _____

14.4.3 Maximum Contract Sum

Basic Services Fee amount (Art. 14.4.1)	\$ _____
<i>plus</i>	
Maximum Reimbursable Expense amount (Art. 14.4.2)	\$ _____
MAXIMUM CONTRACT SUM:	\$ _____

14.5 **Progress Payments.** Payments for Basic Services and Supplemental Basic Services shall be made as provided in Article 7 in accordance with the following schedule:

Schematic Design Phase:	15%
Design Development Phase:	20%
Construction Documents Phase:	40%
Bidding or Negotiation Phase:	5%
Construction Phase:	20%

14.6 **Review Stages.** The Project Engineer shall submit documents to the Owner for review at completion of the Schematic Design Phase, Design Development Phase and at the following stages of completion of the Construction Documents Phase as follows:

50%, 75%, 100%

14.7 **Construction Cost Estimates.** The Project Engineer shall submit construction cost estimates as described in Article 1.1.16 at completion of the Schematic Design Phase, Design Development Phase and at the following stages of completion of the Construction Documents Phase:

50%, 75%, 100%.

14.8 **Review Documents.** The Project Engineer shall, at its expense, furnish and deliver to the Owner for Owner's review, the following number of sets of review documents at the required review stages:

Schematic Design:	2 Full size and 2 half size sets
Design Development:	2 Full size and 2 half size sets
Construction Documents:	2 Full size and 2 half size sets

14.9 **Partnering.** For the benefit of all parties and as a part of Basic Services, the Project Engineer and its entire consultant team shall attend Partnering sessions as needed throughout the course of the project.

14.10 **CADD Standards.** Project Engineer, as a basic service, shall utilize a CADD drawing-layering standard comparable to the current AIA standard and shall review proposed standard with the Owner prior to commencing drawing preparation.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first written above.

Attest:
(Corporate Seal)

Witness

Project Engineer

By: _____

By: _____

Name: _____

Name: _____

Title: Corporate Secretary

Title: President

Date: _____

The Texas Board of Professional Engineers, 1917 S Interstate 35, Austin, TX 78741, telephone (512)-440-7723, has jurisdiction over individuals licensed under the Texas Engineering Practice Act, Chapter 1001, Texas Occupations Code.

Content Approved

Owner: Texas State Technical College

By: _____

By: _____

Date: _____

The following Exhibits are fully incorporated into this Agreement by reference:

EXHIBITS

Exhibit A - Proposal

Exhibit B - Project Milestone Schedule

Exhibit C - Personnel Titles and Hourly Rates

Exhibit D - Statement for Architectural/Engineering Services

Attachment H to Exhibit D – Documentation of Subcontracted Work

Exhibit E - Anticipated Programming Deliverables

Exhibit F - Scope

Exhibit G -

Exhibit H - Policy on Utilization – Historically Underutilized Businesses

Attachment 1 to Exhibit H – HUB Subcontracting Plan

Exhibit I -

Exhibit J - Additional Services Proposal Form

Exhibit K - Adjustment to Basic Services Compensation

EXHIBIT A

PROPOSAL

The Engineer will conduct a Master Water Distribution Plan for the campus. The Master Plan will include creating a model of the existing system and identify areas of the system which need immediate attention, areas of the system which are oversized and make recommendations for water main sizes to adequately serve the college. Based on these findings, and coordinating with the Owner, develop phased construction documents for the replacement of the water mains to eliminate and/or reduce dead ends and zones, and reduce and/or eliminate the need for flushing. As funding permits and at the discretion of the Owner, the Engineer will be retained to provide construction administration services, including bidding, contract administration, and as-built documentation for each construction phase.

EXHIBIT B

PROJECT MILESTONE SCHEDULE

The activities shown in bold below must have the associated dates identified and included with this agreement and represent services to be performed by the Project Engineer pursuant to this Agreement. Supplemental activities shown on the schedule below, which dates are not yet defined, shall be determined at the completion of the Program Phase or at such time when both parties mutually agree that the project is sufficiently developed and documented.

<i>Activity:</i>	<i>Date Completed:</i>
Owner Approves Facility Program Phase	_____
Selection of the Contractor (or CM)	_____
Schematic Design Phase	
Authorize A/E Start	_____
Submit for Owner Review 95%	_____
Joint Review for Owner Comments	_____
Owner Approves Schematic Design	_____
Design Development Phase	
Authorize A/E Start	_____
FPCC Meeting Project Submission Deadline	_____
Submit for Owner Review, AE 95%	_____
Joint Review for Owner Comments	_____
FPCC Meeting Approval	_____
Approve TPC & Design Development - BOR/Chancellor	_____
Owner Approves DD Documents	_____
THECB Approval Phase	
Submit Construction Application -Component	_____
Approve Construction Application – THECB	_____
Owner Approves Guaranteed Maximum Price Phase (for CM Projects)	_____
Construction Documents Phase	
Authorize AE to Start	
A/E Submit 50% CD's for Owner Review	_____
Joint Review for Owner Comments	_____
A/E Submit 95% CD's for Review	_____
Joint Review for Owner Comments	_____
A/E Submit 100% CD's for Review	_____
Joint Review for Owner Comments	_____
Owner Approves 100% Construction Documents	_____
Owner advertises for Competitive Sealed Proposals (if applicable)	_____
Construction Phase Activities	
NTP for Construction	_____
Project Substantial Completion	_____

EXHIBIT C
PERSONNEL TITLES AND HOURLY RATES;
NAMES OF SENIOR PRINCIPAL AND PROJECT TEAM MANAGER

Personnel Title/Position	DSE Hourly Rate	Multiplier	Hourly Billing Rate
--------------------------	-----------------	------------	---------------------

Identify all staff

Engineer shall complete this information and must state the DSE hourly rate

EXHIBIT D

Firm Letterhead, address and contract person

Date:

Texas State Technical College
(enter campus address)

Project Name :
Project Stage Name :
Institution :
A/E Project No. :
Project No. :
Project Manager:

STATEMENT FOR ARCHITECTURAL/ENGINEERING SERVICES

Statement No. _____ for the period ended _____,

for services provided in accordance with A/E Agreement dated _____.

Professional Liability Insurance Policy expiration date:

I. BASIC SERVICES

Construction Cost Limitation/Construction Contract Award Sum \$
(less Construction Contingency)

(Cost Adjustments – [Identify] \$)

Compensation @ _____% \$

Services Performed to Date:

<u>Phase</u>	<u>Fee</u>	<u>Amount</u>	<u>Complete</u>	<u>Total Earned To Date</u>
Schematic Design	15%	\$	%	\$
Design Development	20%	\$	%	\$
Construction Documents	40%	\$	%	\$
Bidding	5%	\$	%	\$
Construction Administration	20%	\$	%	\$
Compensation Adjustments		\$	%	\$
Sub-Total			%	\$

Amount Previously Billed deduct \$ _____

Net Amount Due This Statement \$

II. ADDITIONAL SERVICES

Services Performed to Date: (Append Supplemental Material)

<u>Authorization</u>	<u>Fee Basis</u>	<u>Amount</u>	<u>Complete</u>	<u>Total Earned To Date</u>
(Amendment, letter of agreement, etc.)	(fee percentage as established in Art. 14.)	\$	%	\$
	for Basic Services)	\$	%	\$
Sub-Total		\$		
Amount Previously Billed		deduct	\$	
Net Amount Due This Statement		\$		

III. CHANGE ORDER SERVICES

Services Performed to Date (Append Supplemental Material)

<u>C.P./C.O. No.</u>	<u>Amount</u>	<u>Fee Basis</u>	<u>Amount</u>	<u>Complete</u>	<u>Total Earned To Date</u>
	\$	(fee % established	\$	%	\$
	\$	in Art. 14.5.)	\$	%	\$
	\$		\$	%	\$
Sub-Total				%	\$
Amount Previously Billed		deduct	\$		
Net Amount Due This Statement		\$			

IV. REIMBURSABLE EXPENSES

(complete Attachment 1 to Exhibit D for further breakdown)

Expenses to Date (Append Supplemental Material)

<u>Type</u>	<u>Amount</u>	<u>Multiplier</u>	<u>Total Earned To Date</u>
Travel	\$	1.0	\$
Reproduction/Postage	\$	1.0	\$
Other	\$	1.0	\$
Sub-Total			\$
Amount Previously Billed		deduct	\$
Net Amount Due This Statement		\$	

RECAPITULATION

	<u>Net Amount Due This Statement</u>	<u>Total Earned To Date</u>
I. BASIC SERVICES	\$	\$
II. ADDITIONAL SERVICES	\$	\$
III. CHANGE ORDER SERVICES	\$	\$
IV. REIMBURSABLE EXPENSES	\$	\$
V. PROMPT PAYMENT ACT INTEREST (Prior Payments)		\$
\$_____		
TOTAL AMOUNT EARNED THIS STATEMENT		
TOTAL AMOUNT PREVIOUSLY BILLED deduct	\$_____	
TOTAL AMOUNT DUE THIS STATEMENT	<u>\$_____</u>	<u>\$_____</u>

I certify that the above Statement is correct and now due.

Signature Title Date

(Supplemental material shall include:

- 1.. tabulation of hourly compensation by name, hours & pay rate:
- 1.. by the firm
- 1.. by consultants
- 1.. receipts for reimbursable expenses
- 1.. other substantiating information
- 1.. Exhibits A and B on firm letterhead)

Approved by Project Manager:

Signature Date

Accounting Review:

Initial & Date

FINAL PAYMENT CERTIFICATION AND LIEN WAIVER

The Engineer certifies that all persons, consultants and firms who supplied services to it in connection with this Project have been fully paid for their services or work items, or that they will be fully paid immediately upon receipt of this payment, and that there are no other outstanding debts, obligations or claims related to this Project for which the Owner may be liable or for which the Engineer will look to the Owner for additional payment,. **This payment constitutes full and final payment to the Engineer and its consultants for all services provided for this Project and the Owner is not obligated to make any more payments on their behalf.**

In consideration of the payment herewith made, the undersigned does fully and finally release and hold harmless Texas State Technical College (Owner) from any and all claims, liens or right to claim or lien, arising out of this Project under any applicable bond, law or statute.

Signature Date

FINAL HUB PLAN

The HUB Plan form for final payment is included with this Final Payment Request.
Yes____ No ____

ATTACHMENT 1 TO EXHIBIT D

IV. REIMBURSABLE EXPENSE DETAIL

TRAVEL

Date	Description (*)	Amount
Total amount billed this period		\$ -

POSTAGE/REPRODUCTION

Date	Description	Amount
Total amount billed this period		\$ -

OTHER

Date	Description	Amount
Total amount billed this period		\$ -

Total Reimbursable Expense

\$

**Description should consist of the individual travelling and the type of expense incurred.*

HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report

This form must be completed and submitted to the contracting agency each month to document compliance with your HSP.

Contract/Requisition Number: _____ Date of Award: _____ Object Code: _____
(mm/dd/yyyy) (Agency Use Only)

Contracting Agency/University Name: _____

Contractor (Company) Name: _____ State of Texas VID #: _____

Point of Contact: _____ Phone #: _____

Reporting Period: - Jan. - Feb. - Mar. - Apr. - May - Jun. - Jul. - Aug. - Sept. - Oct. - Nov. - Dec.
(Check only one Month)

Total Contract Amount Paid this Reporting Period to Contractor: \$ _____

Report HUB and Non-HUB subcontractor information

Subcontractor's Name	Subcontractor's VID or HUB Certificate Number	Total Contract \$ Amount from HSP with Subcontractor	Total \$ Amount Paid This Period to Subcontractor	Total Contract \$ Amount Paid to Date to Subcontractor	Object Code (agency use only)
		\$	\$	\$	
		\$	\$	\$	
		\$	\$	\$	
		\$	\$	\$	
		\$	\$	\$	
		\$	\$	\$	
		\$	\$	\$	
		\$	\$	\$	
TOTALS:		\$	\$	\$	

Signature _____ Title: _____ Date _____
 : _____ : _____
 Printed Name: _____ Phone No. _____

EXHIBIT E

ANTICIPATED PROGRAMMING DELIVERABLES

The Project Engineer shall be responsible for coordinating and compiling all of the programming materials in the form of a manual (with exhibits as required). The lead party responsible for generating the materials will be as follows:

<u>Work Area from Guidelines</u>	<u>Lead Responsibility</u>
Programming Schedule	Project Engineer
Ch. 1: Sign-Off Sheet	Owner (form provided by Project Engineer)
Ch. 2: Executive Summary	Project Engineer
Ch. 3: Project Goals	
Institution's Mission Statement and Objectives	Owner
Compliance with Institution's Strategic Plan	Owner
Compliance with Institution's Campus Master Plan	Owner
Functional Programs Curricula Descriptions and Projections	Owner
Project Need	Owner
Project Objectives	Project Engineer/Owner
Ch. 5: Supporting Requirements	Project Engineer
Ch. 6: Existing Site Studies	Project Engineer (except as follows)
Topographic Survey	Owner
Geotechnical Survey	Owner
Ch. 7: Existing Facilities Studies	Project Engineer
Ch. 8: Design Parameters	Project Engineer
Ch. 9: Preliminary Project Cost	Project Engineer
Ch. 10: Project Schedule	Project Engineer
Ch. 11: Implementation Approach	Owner
Ch. 12: Information Specific to This Institution	Owner
Ch. 13: Selection a Delivery Method	Owner/ Project Engineer

EXHIBIT F

SCOPE

Phase I

- Develop a plan for field collection of system pressure, flow data and system survey and create a model of the existing water system.
- Perform model calibration for hydraulic operation and water quality;
- Evaluate distribution system to identify critical areas including dead zones and oversized mains and additional system deficiencies;
- Develop a comprehensive Water Distribution System Master Plan to address identified deficiencies. Master plan shall include a Phased Improvement Plan with detailed project descriptions and estimated project costs;
- Develop a model of the TSTC water system that can be shared with the Physical Plant staff and modified as modifications are made in the TSTC water distribution system;
- Based on the recommendations of the Water Distribution System Master Plan and coordination with TSTC, develop phased engineering design work ensuring adequate zoning for future maintenance, preparation of contract plans and specifications and cost estimates;

Phase II

Phase II will be completed as funding permits and at the discretion of the owner:

- Coordinate with TSTC and develop a fee structure for design
- Develop a project schedule
- Each construction phase will be bid as a Competitive Sealed Proposal.
 - For each phase the following services will be provided:
 - Bidding
 - Contract Administration
 - Record Drawing and Specifications

EXHIBIT H

POLICY ON UTILIZATION – HISTORICALLY UNDERUTILIZED BUSINESSES

(Exhibit H is included herein by reference)

ATTACHMENT 1 TO EXHIBIT H
HUB SUBCONTRACTING PLAN

EXHIBIT J
ADDITIONAL SERVICES PROPOSAL FORM

Date: _____

Additional Services Proposal No. _____

Name of A/E firm:

Re: (project name, number campus)

Refer to the Agreement dated _____, 20__ between _____ (“Owner”) and the undersigned (“Project Engineer”) as amended to the date hereof (such agreement as so modified and amended being hereafter called the “Agreement”) pursuant to which Project Engineer is to perform certain services. The terms which are defined in the Agreement shall have the same meanings when used in this letter. The fee for these requested additional services are in lieu of any other fee adjustment based on an increase to the CCL as related to these services.

1. Owner has requested the performance of the services described below which Project Engineer deems to be Additional Services. Refer to “Attachment A” for complete breakdown.

(Detailed description of Services. Use attachment only for additional description)

2. The services are fully described in the following documents: (list sheet #'s and spec sections)
3. Project Engineer agrees to perform the Additional Services described above subject to and in accordance with the terms and provisions of the Agreement

a.) for a *lump sum fee* which will be determined in accordance with the Agreement in an amount of: _____ Dollars (\$_____)

OR (OPTION – DELETE ON OR THE OTHER)

b.) an *hourly amount* in accordance with the Agreement, not to exceed _____ Dollars (\$_____)

4. For reimbursement of expenses in accordance with the Agreement incurred solely in connection with the performance of these Additional Services, reimbursable expenses will not exceed _____ Dollars (\$_____).

Edit the following are required:

These reimbursable expenses are included within the Additional Services amount referenced above.

Or

These reimbursable expenses are in addition to the Additional Services amount reference above.

5. Project Engineer will perform the services in accordance with any schedule attached hereto (attach schedule if applicable), but in any event not later than _____ (_____) days after Project Engineer is authorized to proceed.

Accepted by:

[PROJECT ENGINEER]

By: _____

Name: _____

Title: _____

Current Fee Summary

ORIGINAL MAXIMUM CONTRACT SUM: \$ _____

Previous Additional Services Proposals: \$ _____

Previous Reimbursable : \$ _____

NET BALANCE Fee: \$ _____

THIS Additional Services Addition / Deduction: \$ _____

THIS Reimbursable Addition / Deduction: \$ _____

ADJUSTED MAXIMUM CONTRACT SUM: \$ _____

(Includes reimbursables for ASP services)

Funding Source: _____ (PM to complete this line)

Accepted this _____ day of _____, 20 __. Project Engineer is authorized to commence performance of the Additional Services on _____, 20 __

OWNER (Project Manger)

By: _____

below)

Name: _____

Title: _____

Project Manager confirms:

HUB opportunities are probable: (check one

NO _____

YES _____

(if yes HUB coordinator signature required below)

HUB Coordinator _____

Date _____

And/Or (note; as per delegation authority)

OWNER (Program Manager)

By: _____

Name: _____

Title: _____

Contract Manager

Reviewed as to form: _____

Distribution:

AE (original)

Central File (original)

PM

Contract Manager

Accounting

Campus

Representative

EXHIBIT K

ADJUSTMENT TO BASIC SERVICES COMPENSATION

Date: _____
Project Name: _____
Campus: _____
Project No: _____

Date of Agreement: _____

To: (state name and address of Engineer)

Attn: _____

In accordance with the provisions of the Agreement, the Owner hereby amends the Basis of Compensation as described in Article 14.5.

The original basis for compensation shall be amended for the following reasons:

(PM describe here deviations resulting from peculiarities encountered in design or other factors altering project scope – see Art. 2.11)

The Basic Services shall be amended as follows. Refer to the interpolation schedule established in Article 14.5.

ORIGINAL CCL: \$ _____
ORIGINAL FEE PERCENTAGE: _____ %
ORIGINAL BASIC SERVICES FEE: \$ _____
(as described in Art. 14.4)

ADJUSTED CCL: \$ _____
FEE PERCENTAGE: _____ %
ADJUSTED BASIC SERVICES AMOUNT \$ _____

OWNER:
By: _____
Name: _____
Title: _____
Date: _____

Distribution: AE, PM, EDPM, Contract Manager,
Central file, Accounting, Campus Representative

