

VENDOR

**PURCHASE ORDER**TEXAS A&M FOREST SERVICE  
PURCHASING DEPARTMENTOrder Date  
12/16/2020

Page 01

200 Technology Way, Suite 1120, College Station, TX 77845-3424; Phone 979-458-7380, FAX 979-458-7386

Purchase Order No.	(Include this number on all correspondence and packages)
P100211	

VENDOR GUARANTEES  
MERCHANDISE DELIVERED ON  
THIS ORDER WILL MEET OR  
EXCEED SPECIFICATIONS IN  
THE BID INVITATION.

<b>VENDOR</b>
14548389240 THOUGHTBARN LLC 4805 RED BLUFF RD STUDIO A AUSTIN, TX 78702-5169

ALL TERMS AND  
CONDITIONS SET  
FORTH IN OUR BID  
INVITATION BECOME  
A PART OF THIS  
ORDER.

<b>INVOICE TO:</b>
TEXAS A&M FOREST SERVICE FIAD--PURCHASING 200 TECHNOLOGY WAY, SUITE 1120 COLLEGE STATION TX 77845-3424
<b>SHIP TO:</b>
TEXAS A&M FOREST SERVICE HUDSON OFFICE 155 TEXAS FOREST SERVICE LOOP LUFKIN TX 75904

ANY EXCEPTIONS TO PRICING OR DESCRIPTION CONTAINED HEREIN MUST BE APPROVED  
BY THE TEXAS A&M FOREST SERVICE PURCHASING DEPARTMENT **PRIOR** TO SHIPPING.

PLEASE NOTE: IF YOUR INVOICE IS NOT ADDRESSED AS INSTRUCTED  
PAYMENT WILL BE DELAYED.

Item	Description	Quantity	UOM	Unit Price	Ext Price
	USER REF: 000000-AJD				
1	Pre-Design/Programming. (1 site visit included) 3 Weeks to complete.	1	LOT	5,000.000	5,000.00
2	Schematic Design. 3 weeks to complete.	1	LOT	22,500.000	22,500.00
3	Design Development. 8 weeks to complete.	1	LOT	35,000.000	35,000.00
4	Construction Documents. 8 weeks to complete.	1	LOT	55,000.000	55,000.00
5	Bidding & Negotiation.	1	LOT	2,500.000	2,500.00
6	Construction Administration. (9 site visits included).	1	LOT	45,000.000	45,000.00
7	Structural Engineering. Duration of project. (3 site visits included).	1	LOT	39,000.000	39,000.00
8	MEP Engineering. Duration of project. (3 site visits included).	1	LOT	55,400.000	55,400.00
9	MEP Additional Services - SECO Compliance.	1	LOT	7,500.000	7,500.00
10	MEP Additional Services - Energy Model (for SECO).	1	LOT	7,500.000	7,500.00
11	Cost Estimating.	1	LOT	8,000.000	8,000.00
				<b>TOTAL</b>	<b>282,400.00</b>
	***** NET 30 *****				
	NOTE TO VENDOR: "SHIP TO" AND "INVOICE TO" ADDRESSES MAY				

AJD

Texas A&amp;M Forest Service cannot accept collect freight shipments.

FOB: DESTINATION FRT INCLUDED

Terms:

FAILURE TO DELIVER - If the vendor fails to deliver these supplies by the promised delivery date or a reasonable time thereafter, without giving acceptable reasons for delay, or if supplies are rejected for failure to meet specifications, the State reserves the right to purchase specified supplies elsewhere, and charge the increase in price and cost of handling, if any, to the vendor. No substitutions nor cancellations permitted without prior approval of Purchasing Department.

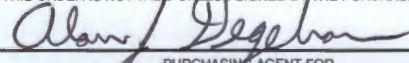
IN ACCORDANCE WITH YOUR BID, SUPPLIES/EQUIPMENT MUST BE PLACED IN THE DEPARTMENT RECEIVING ROOM BY

The State of Texas is exempt from all Federal Excise Taxes.

STATE AND CITY SALES TAX EXEMPTION CERTIFICATE: The undersigned claims an exemption from taxes under Texas Tax Code, Section 151.309 (4), for purchase of tangible personal property described in this numbered order, purchased from contractor and/or shipper listed above, as this property is being acquired for the exclusive use of the State of Texas.

The Terms and Conditions of the State of Texas shall prevail.

THIS ORDER IS NOT VALID UNLESS SIGNED BY THE PURCHASING AGENT



PURCHASING AGENT FOR

TEXAS A&amp;M FOREST SERVICE

VENDOR

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Item	Description	Quantity	UOM	Unit Price	Ext Price
	<p>DIFFER. FAILURE TO SUBMIT INVOICE TO PROPER ADDRESS MAY RESULT IN DELAYED PAYMENT.</p> <p>SPECIFICATION REQUIREMENTS FROM RFQ-20-001 SHALL PREVAIL ALONG WITH TERMS AND CONDITIONS FROM CONTRACT NUMBER CO-21-059. CONTRACT AND ARCHITECTS PROPOSAL ARE ATTACHED.</p> <p>VENDOR QUOTE: RFQ-20-001 VENDOR REF: LUCY BEGG AT 510-684-6040</p>				

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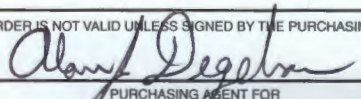
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PURCHASING AGENT FOR  
TEXAS A&M FOREST SERVICE

**AGREEMENT**

**BETWEEN**

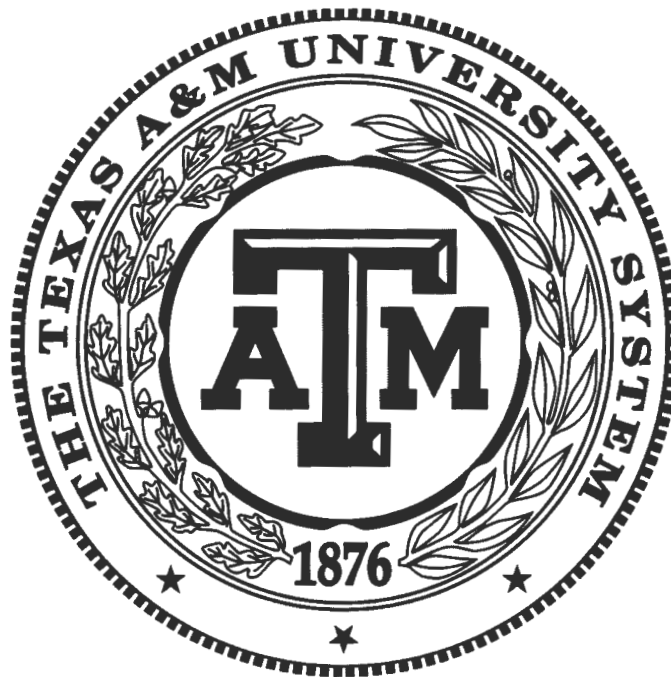
**THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY**

**SYSTEM**

**AND**

**THOUGHTBARN, LLC,**

**ARCHITECT/ENGINEER**





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Ex A Thoughtbarn Proposal for Architectural Services

**AGREEMENT  
BETWEEN  
THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY  
SYSTEM  
AND  
THOUGHTBARN, LLC,  
ARCHITECT/ENGINEER**

This Agreement is effective as of the date signed by the Director of the Texas A&M Forest Service (the "Effective Date"), by and between the **BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM** ("Owner") and **THOUGHTBARN, LLC**, Architect/Engineer (the "Architect/Engineer" or "A/E") for the: Hudson Office Building construction project (the "Project").

Owner intends to construct the Project at Texas A&M Forest Service, Hudson (Lufkin), Texas, for which, under a total cost allocation, Two Million and no/100 dollars (\$2,000,000.00) is the Amount Available for the Construction Contract ("AACC").

**Article 1  
Architect/Engineer's Services and Responsibilities**

The Architect/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 Architect/Engineer's **Basic Services**

1.1.1 **Basic Services.** The Architect/Engineer's Basic Services include all disciplines identified in Article 15 and Architect's Proposal, attached as Exhibit A.

1.1.2 **Reimbursable Services.** Reimbursable Services are the services specifically identified in Paragraph 15.2 that are provided by the Architect/Engineer in conjunction with the delivery of Basic Services under this Agreement. Compensation for Reimbursable Services will be made when the services are complete.

1.1.3 The Program of Requirements (see Article 2) describes the intended project scope and character along with the anticipated Project Schedule and the Preliminary Project Cost. The Program of Requirements is incorporated herein by reference. It is the Architect/Engineer's responsibility to review and understand the requirements of the Program of Requirements and to perform professional services so as to achieve those objectives.

1.1.4 The Amount Available for the Construction Contract ("AACC") for this Project is specified in Article 15. The Architect/Engineer is responsible for managing the design of the Project so that the total construction cost does not exceed the Amount Available for the

Construction Contract. Evaluations of the Owner's budget for the Project and Estimated Construction Costs prepared by the Architect/Engineer represent the Architect/Engineer's judgment as a design professional familiar with the construction industry. Notwithstanding the foregoing, the Architect/Engineer cannot and does not warrant or represent that estimates or prices will not vary from the AACC. It is recognized, however, that neither the Architect/Engineer nor the Owner has control over the cost of labor, materials, or equipment; or bidding, market, or negotiating conditions. Bids or negotiated prices may vary from the Owner's budget for the Project, or from the Estimated Construction Costs prepared or agreed to by the Architect/Engineer.

1.1.5 If the Owner significantly increases or decreases the AACC, the Owner shall notify the Architect/Engineer, and the Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality and an equitable adjustment in the Architect/Engineer's Fees.

1.1.6 The Architect/Engineer shall manage the design of the Project to achieve the Program of Requirements' objectives of scope and cost through completion and acceptance of the Construction Documents phase. The Architect/Engineer shall advise the Owner of any adjustments to the scope or quality of the Project necessary to comply with the Amount Available for the Construction Contract during design development as part of Basic Services.

1.1.7 The Architect/Engineer shall submit the names of all consultants, persons, or firms, that the Architect/Engineer proposes to use in the execution of its services and shall provide the Owner, upon request, with a fully executed copy of each contract or agreement that the Architect/Engineer enters into with any consultant. The Architect/Engineer is responsible for coordinating the work of all of its consultants such 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 Architect/Engineer of any consultant for the Project to which Owner has a reasonable objection. Architect/Engineer, however, shall not be required to contract with any consultant to which it has a reasonable objection.

1.1.8 The Architect/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.

1.1.9 The Architect/Engineer agrees on allocating work to subcontractors (consultants) as listed (or indicated) on their HUB Subcontracting Plan, in accordance with The A&M System Policy on Historically Underutilized Businesses. 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 completion, the Owner may require information from the Architect/Engineer, and may conduct audits, to assure that the HUB Subcontracting Plan is followed.

1.1.10 The Architect/Engineer shall, consistent with the AACC design the Project to incorporate current systems technology as appropriate to the stated mission of the institution and the programmed functional activities. The technology shall be compatible with any existing facility and acceptable to the Owner.

1.1.11 This section intentionally deleted.

1.1.12 This section intentionally deleted.

1.1.13 Basic design services shall include incorporation of the provisions of the Energy and Water Conservation Design Standard for New State Buildings as administered by the State Energy Conservation Office (SECO), State Comptroller's Office of the State of Texas. Architect/Engineer shall provide the Owner with the SECO Compliance Certification and associated compliance documentation as required.

1.1.14 This section intentionally deleted.

1.1.15 As part of basic design services and pursuant to Section 447.004 *Texas Government Code*, Architect/Engineer shall provide the Owner with the SECO Compliance Certification for onsite reclaimed water technologies and associated compliance documentation as required.

1.1.16 This section intentionally deleted.

1.1.17 Architect/Engineer shall use reasonable care consistent with the foregoing standard in interpreting and designing in accordance with LEED. Architect/Engineer shall not be responsible for Contractor's failure to adhere to the Contract Documents and any applicable laws, codes and regulations incorporated therein, nor for any changes to the design made by the Owner without the direct participation and written approval of the Architect/Engineer.

1.1.18 This section intentionally deleted.

1.1.19 The Architect/Engineer, as part of Basic Services, shall engage a recognized and experienced construction cost estimating consultant acceptable to the Owner to prepare detailed Estimated Construction Costs of the Project in a form acceptable to the Owner following the Construction Specifications Institute (CSI) MasterFormat 2012. An Initial Estimate shall be provided at the Pre-Design & Programming Phase; An updated Estimate shall be included with the Plans and Specifications submitted for review at completion of the Design Development phase. If the Estimated Construction Cost exceeds the Amount Available for the Construction Contract at any time, the Owner will determine whether to increase the Amount Available for the Construction Contract or require the Architect/Engineer to revise the Project scope or quality. to comply with the Amount Available for the Construction Contract at no additional cost to Owner. Reductions in Project scope or quality are subject to Owner's review and approval. If the Estimated Construction Cost is below the Amount Available for the Construction Contract, the Owner and Architect/Engineer shall mutually agree on changes to the project scope or the Amount Available for the Construction Contract. In any event, the Architect/Engineer's modification/revision of the design is the limit of Architect/Engineer's responsibility to comply with the Amount Available for the Construction Contract.

1.1.20 The Architect/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 15. In the next phase, the Architect/Engineer shall incorporate into the documents such corrections and amendments as the Owner requests, unless the Architect/Engineer provides the Owner with the Architect/Engineer's reasonable objection to such corrections or amendments. The Architect/Engineer will be responsible for any damages incurred by the Owner to the extent they are found to be caused by

Architect/Engineer's failure to incorporate requested corrections and amendments to the documents.

1.1.21 Owner will utilize a review and comment form to record all comments during the document reviews and will provide its review comments to Architect/Engineer. The Architect/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 Architect/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 Architect/Engineer's then current Statement for Architectural/Engineering Services until a proper response is obtained. 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 Architect/Engineer's additional services subsequently incurred for such unlisted changes shall be borne by Architect/Engineer.

1.1.22 The Architect/Engineer, as part of Basic Services, shall become sufficiently familiar with the existing facilities, systems and conditions at the Project site so that the proposed Project will properly interface functionally with them.

1.1.23 Architect/Engineer agrees and acknowledges that Owner is entering into this Agreement in reliance on Architect/Engineer's represented professional abilities with respect to performing Architect/Engineer's services, duties, and obligations under this Agreement. Architect/Engineer agrees to use Architect/Engineer's professional efforts, skill, judgment, and abilities in performing Architect/Engineer's services. Architect/Engineer shall perform its services diligently and shall endeavor to further the interest of the Owner in accordance with Owner's requirements and procedures. Architect/Engineer shall perform its services in accordance with the professional skill and care ordinarily provided by competent architects and engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect and engineer (the "Standard of Care"). Subject to this Standard of Care, Architect/Engineer shall interpret and apply applicable national, federal, state, municipal, and State of Texas building and accessibility laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction in effect at the time the services are provided. There are no obligations, commitments, or impediments of any kind known to the Architect/Engineer that will limit or prevent performance by Architect/Engineer of its services. Architect/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. Nothing contained in this Agreement shall require the Architect/Engineer to exercise professional skill and judgement greater than that required by the Standard of Care. This limitation shall not be modified by any certification or representation made by Architect/Engineer as an accommodation upon request of Owner, and Architect/Engineer is not a fiduciary of Owner.

1.1.24 Architect/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 Architect/Engineer (by Owner or any other party)



that Architect/Engineer uses for the Project. Architect/Engineer shall identify to the Owner in writing any such documents or data which, in Architect/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 the accuracy or suitability of such documents or data as are furnished unless Architect/Engineer advises Owner in writing that in Architect/Engineer's professional opinion such documents or data are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes Architect/Engineer to proceed in accordance with the documents or data as originally given.

1.1.25 Architect/Engineer's services shall be free from any material errors or omissions in accordance with the Standard of Care. Neither acceptance nor approval of Architect/Engineer's services by the Owner shall relieve Architect/Engineer of any of its professional duties or release it from any liability, it being understood that Owner is, at all times, relying upon Architect/Engineer for its skill and knowledge in performing Architect/Engineer's services. Owner shall have the right to reject any of Architect/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 Architect/Engineer or its consultants. Upon notice of any such errors or omissions, Architect/Engineer shall promptly provide any and all services necessary to correct or remedy them at no additional cost to the Owner. Architect/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.

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

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

1.1.28 Architect/Engineer shall allocate adequate time, personnel and resources as necessary to perform its services. Architect/Engineer's Senior Principal(s) responsible for managing the Project and while employed by Architect/Engineer shall not be changed without the prior written 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 Architect/Engineer. The Senior Principal(s) shall act on behalf of Architect/Engineer with respect to all phases of Architect/Engineer's Services and shall be available as reasonably required for the benefit of the Project and Owner.

1.1.29 Architect/Engineer shall review any applicable 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 Architect/Engineer's design for the Project and the construction of the Project. The Architect/Engineer shall identify to Owner any observed discrepancies between the documents and visible conditions, and shall consult with the Owner on any special measures, services or further investigations required for Architect/Engineer to perform its services in accordance with the Standard of Care. This review shall be accomplished by registered, professional architects and engineers, as appropriate.

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

1.1.31 Insurance Coverage. The Architect/Engineer shall obtain and maintain, for the duration of this Agreement or longer as stated in subparagraph D below, the minimum insurance coverages set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to Owner. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to the Architect/Engineer under this Agreement. The Architect/Engineer shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The Architect/Engineer is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to Owner at least thirty days before the effective date of the cancellation.

Coverages	Limit
A. Worker's Compensation	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident \$1,000,000 Disease/Employee \$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for [Member]. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

B. Automobile Liability	
Owned Vehicles	\$1,000,000
Non-owned Vehicles	\$1,000,000
Hired Vehicles	\$1,000,000

Business auto liability insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for bodily injury and property damage.

**Option:** If a separate business auto liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the commercial general liability policy.

C. Commercial General Liability

General Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000
Premises and Operations	\$1,000,000
Personal/Advertising Injury	\$1,000,000
Products/Completed Operations	\$1,000,000
Damage to rented Premises	\$ 300,000
Medical Payments	\$ 5,000

D. Professional Liability (E&O)

The Architect/Engineer shall maintain Professional Liability; covering wrongful acts, errors and/or omissions, including design errors of the Architect/Engineer for damages sustained by reason of or in the course of performance of this Agreement for three (3) years after the Project is substantially complete. The professional liability insurance shall be in an amount based on the AACC and determined by the following chart:

AACC Limit	
\$0 - \$20,000,000	\$1,000,000 each claim / \$ 1,000,000 aggregate
\$20,000,001 - \$60,000,000	\$2,000,000 each claim / \$ 4,000,000 aggregate
\$60,000,001 - \$90,000,000	\$3,000,000 each claim / \$ 6,000,000 aggregate
\$90,000,001 - \$120,000,000	\$4,000,000 each claim / \$ 8,000,000 aggregate
\$120,000,001 – higher	\$5,000,000 each claim / \$10,000,000 aggregate

1.1.32 Architect/Engineer shall include The Texas A&M University System Board of Regents, The Texas A&M University System and Texas A&M Forest Service as additional insured on the Commercial General Liability and Automobile Liability policies, and the Workers' Compensation policy shall include a waiver of subrogation in favor of the Owner.

1.1.33 The Owner may select a Program Manager for this Project, and the Architect/Engineer shall coordinate its services with the Program Manager. The Owner may direct the Architect/Engineer to recognize the Program Manager as its representative for the performance of various duties which are otherwise defined as the responsibility of the Owner. Architect/Engineer hereby acknowledges such appointment.

1.1.34 This section intentionally deleted.

1.1.35 This section intentionally deleted.

1.1.36 This section intentionally deleted.

1.1.37 This section intentionally deleted.

1.1.38 This section intentionally deleted.

1.1.39 This section intentionally deleted.

1.1.40 This section intentionally deleted.

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1.1.42 This section intentionally deleted.

1.1.43 Architect/Engineer, at the Architect/Engineer's expense, at each stage of review described in Paragraph 15.7, shall furnish and deliver to the Owner the number of complete printed copies of all Drawings, Specifications and basis of design as enumerated in paragraph 15.7, which copies shall become the property of the Owner. The Architect/Engineer shall pay for the reproduction of all Plans, Specifications and other documents for use by the Architect/Engineer and its consultants and pass along the expense to Owner as a Reimbursable Expense.

1.1.44 The Architect/Engineer shall cooperate and coordinate design and construction services with other services provided to Owner under separate contracts. Separate contracts may include, but are not necessarily limited to, the following:

- a). Owner supplied furnishings and equipment.
- b). Owner's document review services.
- c). Owner's quality assurance services.

1.1.31 As a part of Basic Services, the A/E shall, in accordance with Tx. Govt. Code Chapter 2252 specify iron and steel products that are produced in the United States. The A/E shall notify the Owner of any specified iron and steel product not produced in the United States. The A/E shall also advise the Owner if any of the exemptions identified in Chapter 2252 such as availability and quality might apply

## **1.2 Pre-Design & Programming Phase**

1.2.1 During the Pre-Design & Programming Phase, Architect/Engineer will perform the services described in Architect's Proposal, attached as Exhibit A.

1.2.2 The Architect/Engineer shall direct the preparation of an Estimated Construction Cost as described in Sub-paragraph 1.1.13.

## **1.3 Schematic Design Phase**

1.3.1 Based on the mutually agreed upon Program of Requirements, Amount Available for the Construction Contract and the Project Schedule, the Architect/Engineer shall prepare sufficient alternative approaches for design and construction of the Project to satisfy Owner's requirements and shall, at completion of this phase, submit Schematic Design Documents and any additional requirements set forth in Article 15. The Architect/Engineer shall review alternative approaches to design and construction for the Project and the Schematic Design Documents as they are being prepared at intervals appropriate to the progress of the Project with the Owner at the Project site or other location specified by the Owner within the State of Texas.

1.3.2 Architect/Engineer shall provide all services necessary to perform the services of this phase (preparation of Schematic Design Documents).



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

1.3.4 This section intentionally deleted.

1.3.5 Before proceeding into the Design Development Phase, the Architect/Engineer shall obtain Owner's written acceptance of the Schematic Design documents.

1.3.6 The Architect/Engineer shall participate in a final review of the Schematic Design Documents with the Owner at the Project site or other location specified by Owner in the State of Texas. Prior to the Owner's approval of the Schematic Design Documents, the Architect/Engineer shall incorporate such changes as are necessary to satisfy the Owner's review comments, any of which may be appealed for good cause.

#### **1.4 Design Development Phase**

1.4.1 Based on the approved Schematic Design Documents and any adjustments to the Program of Requirements or Amount Available for the Construction Contract authorized by the Owner, the Architect/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 the requirements set forth in Article 15. The Architect/Engineer shall review the Design Development Documents as they are being prepared at intervals appropriate to the progress of the Project with the Owner at the Project site or other location specified by Owner in the State of Texas.

1.4.2 The Architect/Engineer shall direct the preparation of a detailed Estimated Construction Cost as described in Sub-paragraph 1.1.19 to confirm compliance with the Amount Available for the Construction Contract and include it with the completed Design Development Documents. The Architect/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 Amount Available for Construction Contract and revise the Design Development Documents as may be required at no additional cost to Owner, subject to the exceptions set forth in Sub-paragraph 1.1.19, in which case the adjustments/revisions shall be performed as Additional Services.

1.4.3 Before proceeding into the Construction Document Phase, the Architect/Engineer shall do coordination, aggregation and "clash detection" to remove conflicts in design between disciplines and obtain Owner's written acceptance of the Design Development documents and approval of the mutually established Amount Available for the Construction Contract and schedule.

1.4.4 This section intentionally deleted.

1.4.5 This section intentionally deleted.

1.4.6 Architect/Engineer shall assist the Owner, if requested, with seeking approval of the Project by the Texas Higher Education Coordinating Board (THECB). Such assistance shall include (i) the preparation of a listing of the rooms and square footages in the Project, and (ii) the

preparation of project cost information, in accordance with THECB Guidelines. This information shall be provided at the completion of the Design Development Phase when requested by the Owner. The listing of rooms and square footages shall then be updated to reflect any changes occurring during construction and provided to the Owner at Substantial Completion.

### **1.5 Construction Document Phase**

1.5.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Amount Available for the Construction Contract authorized by the Owner, the Architect/Engineer shall prepare, for approval by the Owner, Construction Documents consisting of Drawings, Schedules and Specifications in accordance with Owner's written requirements setting forth in detail the requirements for construction of the Project. The Plans, Drawings and Specifications for the entire Project shall be prepared so that the construction of the building and related facilities, together with its built-in permanent fixtures and equipment which will cost not more than the Amount Available for the Construction Contract established by Owner. The Architect/Engineer will be responsible for managing the design to stay within the Amount Available for the Construction Contract. The Architect/Engineer shall review the Construction Documents as they are being prepared at intervals appropriate to the progress of the Project with the Owner at the Project site or other location specified by Owner in the State of Texas.

1.5.2 As a part of Construction Documents Phase, Architect/Engineer shall accomplish model coordination, aggregation and "clash detection" to remove conflicts in design between systems, structures and components. Architect/Engineer shall demonstrate and provide written assurance to Owner that all conflicts/collisions between models have been resolved

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

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

1.5.5 The Architect/Engineer shall provide coordination and inclusion of sequence of operations for all operable systems in the facility as defined by Owner during Design Development. The Architect/Engineer shall direct the preparation of a detailed Estimated Construction Cost as described in Sub-paragraph 1.1.19 to confirm compliance with the Amount Available for the Construction Contract and include it with the completed Construction Documents. The Architect/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 Amount Available for Construction Contract and revise the Construction Documents as may be required.

1.5.6 The Architect/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 Architect/Engineer shall incorporate such changes as are necessary to satisfy the Owner's review comments.

1.5.7 Before proceeding into the Bidding and Proposal Phase, the Architect/Engineer shall obtain Owner's written acceptance of the Construction Documents and approval of the Final Amount Available for the Construction Contract as approved by the Board of Regents.

#### **1.6 Bidding and Proposal Phase**

1.6.1 Architect/Engineer shall answer inquiries from bidders and proposers at Owner's request.

1.6.2 This section intentionally deleted.

1.6.3 In the event the best value proposal received for the Project exceeds the Final Amount Available for Construction Contract established at the completion of the Construction Document Phase, the Architect/Engineer, subject to terms in Exhibit A, and if so directed by Owner, shall revise the drawings and specifications as necessary to bring the cost of the Project within the Final Amount Available for Construction Contract. The Owner reserves the right to accept a proposal and award a construction contract that exceeds the Final Amount Available for Construction Contract, if such award is determined by Owner to be in the Owner's best interest.

1.6.4 The Architect/Engineer shall provide the models and drawings in native file format to all bidders upon request.

#### **1.7 Construction Phase - Administration of the Construction Contract**

1.7.1 The Construction Phase shall commence with the award of the Contract for Construction and issuance of a Notice to Proceed with Construction Services and terminate sixty (60) days after Final Payment to the Contractor is made, or when all of Architect/Engineer's services have been satisfactorily performed, whichever occurs later.

1.7.2 Architect/Engineer shall provide administration of the Contract for Construction as set forth below.

1.7.3 The Architect/Engineer shall provide the design intent models and drawings derived from the models in native and IFC format for the contractor's use during construction

1.7.4 The Architect/Engineer shall provide updated documents at each Contractor's monthly meeting and when requested.

1.7.5 The Architect/Engineer shall review the Contractor's list of proposed subcontractors for the Work, initial administrative submittals for Project Schedule, Schedule of Values and Submittal Schedule to establish appropriate bases for construction monitoring, payment processing, and system commissioning. The Architect/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 Architect/Engineer shall review periodic updates of all schedules with Owner and Contractor to evaluate appropriateness.

1.7.6 The Architect/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 Architect/Engineer shall not be restricted, modified or extended without written acceptance of the Owner.

1.7.7 Site Visits. Architect/Engineer will participate in one (1) site visit during the Schematic Design Phase and nine (9) visits during Construction Phase (included in the Basic Services). Site visits exceeding the amount set forth in this Section 1.7.7 shall be Additional Services. The purpose of the Architect/Engineer's site visits is 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. Architect/Engineer and its consultants shall document its site visits and meetings. The Architect/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 Architect/Engineer shall keep the Owner informed of the progress and quality of the Work observed, and shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. Architect/Engineer shall notify Owner and the Contractor in writing of any portions of the work which Architect/Engineer has observed as not being in conformity with the Construction Documents and make recommendations as to correction of the deficiencies or defects. Architect/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 observation, the Architect/Engineer and its consultants shall visit the site for specific purposes related to certification of progress payments, pre-installation meetings, start-up or mock-up reviews for significant work activities and for formal inspections of the Work. The Architect/Engineer and its consultants shall provide written reports of all site visits to the Owner and Contractor.

1.7.8 The Architect/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.

1.7.9 The Architect/Engineer shall at all times have access to the Work wherever it is in preparation or progress.

1.7.10 The Architect/Engineer shall determine the amounts owing to the Contractor based on its periodic 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 online Application for Payment in an appropriate amount.

1.7.11 The certification of a Contractor's Application for Payment shall constitute a representation by the Architect/Engineer to the Owner, based on the Architect/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 Architect/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 Architect/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.

1.7.12 The Architect/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 Architect/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.

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

1.7.14 Subject to approval of the Owner, the Architect/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.

1.7.15 The Architect/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 to cause no delay to the Contractor's scheduled progress, but in any event no more than fourteen (14) days after receipt. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Architect/Engineer's review shall not constitute approval of any construction means or methods.

1.7.16 Architect/Engineer shall clarify and interpret the intent and scope of the Construction Documents and, if necessary or appropriate, issue supplemental documents and 3D views to amplify or explain portions of the Construction Documents.

1.7.17 Architect/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. The Architect/Engineer shall inform Owner if a request for change order involves a change in scope.

1.7.18 Architect/Engineer shall prepare revised Construction Documents, where appropriate, to illustrate and document the work required by ASIs, RFIs and approved Change

Orders. All proposed changes to Drawings and Specifications, regardless of how initiated, shall be totally defined in the documents depicting them as to scope of work added, removed, or changed. The revised Construction Documents shall be derived from revised model(s). Such revisions shall be clearly indicated and a current revision date shall be included. 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.

1.7.19 Architect/Engineer and its consultants shall conduct and participate in concealed space observations (in-wall and above ceiling), systems start-up observations, systems integration/operational demonstrations, Substantial Completion and pre-Final work observations to determine the dates of Substantial Completion, and Final Completion. In association with each observation, Architect/Engineer and its consultants shall prepare a list of items that Architect/Engineer, its consultants and Owner have observed as deficiencies in the Work, requiring remedial work or replacement. The Architect/Engineer shall assemble, transcribe and distribute the official punch list(s) to all affected parties, and thereafter review the corrected and/or replaced work and assist in verification of correction of all items.

1.7.20 Architect/Engineer shall review, for conformance with the Contract Documents, Contractor's submission of guarantees and warranties.

1.7.21 The Architect/Engineer and its consultants shall assist the Owner in checking Record Drawings maintained by the Contractor during the course of the Work in association with certifying progress payments and shall review record documents for completeness and compliance with Contract requirements at Substantial Completion and at Final Completion of the Project. The Architect/Engineer is not responsible for any errors and omissions in the information provided by others that are included in the Record Drawings.

1.7.22 Architect/Engineer shall receive and review Contractor's submission of 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 Architect/Engineer shall certify final payment to the Contractor when the requirements of the Contract between Owner and Contractor have been met.

1.7.23 Architect/Engineer shall throughout construction maintain and keep current the model(s) and Construction Documents by incorporating all Addenda, RFIs, ASIs and Change Orders. Upon Final Completion of the construction, the Architect/Engineer shall deliver copies to the Owner, as follows:

- Specifications: Provide two (2) electronic sets of final specifications incorporating all changes on disc type media or portable drive in PDF and MS Word format.

- Drawings: Provide two (2) electronic sets of final drawings incorporating all changes on disc type media or portable drive in DWG (references attached) and PDF format.
- Model(s): Provide two (2) electronic sets of all models incorporating all changes on disc type media or portable drive in native and IFC file format.
- Label all media indicating the project name and project number as well as an index file listing the contents on the media.
- The A/E shall verify that all model links are intact and in working condition.

1.7.24 Architect/Engineer shall provide assistance to Owner through the commissioning consultant/agent for the purpose of advising and counseling Owner's personnel in the usage, operation and maintenance of the building mechanical, electrical, and plumbing systems.

1.7.25 This section intentionally deleted..

1.7.26 The Architect/Engineer shall be available after final payment to advise the Owner regarding Warranty items and to review Warranty work during the Warranty period. Architect/Engineer shall participate in the Project's one-year warranty inspection, including preparation of punch lists and inspection of corrected punch list items.

## **1.8 Additional Services**

1.8.1 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 the Basic Services Fee. Prior to commencing any Additional Service not specifically requested by Owner, Architect/Engineer shall prepare for acceptance by the Owner an Additional Services Proposal, in a format as directed by Owner, which shall describe in detail the nature or scope of the Additional Services, the basis upon which Architect/Engineer has determined that such services are Additional Services, and which shall set forth the maximum amount of fees for which Architect/Engineer is prepared to perform the Additional Services, together with a proposed schedule for the performances of the Additional Service. Architect/Engineer shall proceed only after written acceptance by Owner of the Additional Services Proposal.

1.8.2 Additional Services include, but are not limited to: (a) redesign or significant revisions to the Schematic Design or Design Development Documents after the phase of work has been approved; (b) participation in design reviews by non-Owner/third-party stakeholders, or design revisions requested by non-Owner third-party stakeholders; (c) modification of the Construction Documents to meet budget after completion of the Construction Document Phase; (d) reviewing requests for substitutions during the bidding process and preparing addenda identifying approved substitutions to prospective bidders; (e) preparation of change orders not caused by Architect/Engineer; (f) site visits to Lufkin, Texas, other than one (1) site visit during Design Phase and nine (9) visits during Construction Phase; (g) green building certification (available for an additional fee by Architect/Engineer); (h) marketing or special presentation materials (such as 3D renderings) requested by Owner, other than those produced as part of basic Schematic Design or Design Development Services; (i) participation in educational or promotional events concerning utilization of mass timber in building requested by Owner; and (j) design of custom furniture or lighting.

1.8.3 Upon acceptance by Owner, each Additional Services Proposal and the services performed by Architect/Engineer pursuant to the 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.

1.8.4 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 Architect/Engineer to complete its responsibilities hereunder free from any material errors and omissions in accordance with Standard of Care. Architect/Engineer shall not be required to perform any destructive testing unless agreed to as an Additional Service.

#### **1.9 Work Not Included in Architect/Engineer's Services**

1.9.1 Work which will not be performed by Architect/Engineer under this Agreement includes: (a) landscape design; (b) design of specialized sustainability features such as photovoltaics, automated daylighting, or rainwater collection; (c) third-party commissioning fees, energy modeling, work or calculations required of other specialized consultants and field verification of LEED work, or other green building program certification (unless requested by Owner and charged by Architect/Engineer as an Additional Service); (d) acoustical design or consulting; (e) design of security systems, phone, cable, data; (f) fee-based preconstruction services by suppliers of mass timber material systems; (g) civil engineering; (h) geotechnical engineering; and (i) surveys.

#### **1.10 Time**

1.10.1 Architect/Engineer shall perform all of Architect/Engineer's services described herein as expeditiously as is consistent with (1) Architect/Engineer's professional efforts, skill and care, (2) the orderly progress of such services. Architect/Engineer shall at all times provide sufficient personnel to accomplish Architect/Engineer's services in accordance with the Standard of Care.

1.10.2 Included in the Program of Requirements is a schedule for completion of each of the phases of services to be performed by Architect/Engineer pursuant to this Agreement. The project schedule contains milestone dates which have been established in the Request for Qualifications previously issued or may be modified by the Owner to reflect current conditions. The Architect/Engineer shall coordinate with the Owner in the development and maintenance of the schedule for performance of the professional services for the Project, including the Architect/Engineer's services. Changes in this schedule may be made only with the written approval of Owner. Architect/Engineer shall perform all of its services in accordance with the Standard of Care.

### **Article 2 Owner's Responsibilities**

2.1 The Owner has provided or will provide a Program of Requirements to the Architect/Engineer, or the Owner and Architect/Engineer may agree that Architect/Engineer shall prepare a Program of Requirements as an Additional Service as set forth in Article 15 of this



Agreement. The Program of Requirements will set forth the Owner's description of the project scope, preliminary project cost, schedule, criteria for design objectives, characteristics and constraints, space requirements and relationships, site requirements, existing facilities, and desired special components, systems and equipment. If Architect/Engineer prepares the Program of Requirements, then Owner will review the Program of Requirements when completed and then determine whether to proceed with the Project and authorize commencement of Basic Services. The Owner reserves the right to terminate this Agreement following completion of the Program of Requirements, and shall have no further obligation to Architect/Engineer other than payment for services authorized by Owner and provided by Architect/Engineer prior to such termination in accordance with the terms and conditions of this Agreement.

2.2 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. The Owner shall also furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

2.3 The Owner will provide a preliminary project budget and schedule for the Project. The budget will include the Amount Available for the Construction Contract, contingencies for changes in the Work during construction, and other costs which are the responsibility of the Owner.

2.4 The Owner designates the Texas A&M AgriLife Construction Engineer 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 Architect/Engineer and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect/Engineer's services. The Texas A&M AgriLife Construction Engineer is also designated as the Owner's representative for the purpose of administering this Agreement, including determination of fees earned by the Architect/Engineer. The Owner shall have the right to withhold from payments due Architect/Engineer such sums as the Owner deems reasonably necessary to protect Owner against any loss or damage which may result from negligence by Architect/Engineer or failure of Architect/Engineer to perform Architect/Engineer's obligations under this Agreement pending final resolution of such claims.

2.5 The Owner, at Owner's cost, will secure the services of laboratory testing engineers, or other special consultants to develop additional information to the extent necessary for the design of the Project. The Architect/Engineer shall provide the Owner with parameters for inclusion in the Owner's instructions to such providers. Architect/Engineer shall not be responsible for the negligent acts or omissions of laboratory testing engineers and/or special consultants retained by Owner.

2.6 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.

2.7 The Owner shall furnish all legal, accounting, auditing and insurance counseling services deemed necessary by the Owner for the Project.

2.8 The services, information and reports required by the preceding paragraphs shall be furnished at the Owner's expense.

2.9 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 Architect/Engineer; however, Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

2.10 The Owner will review the Architect/Engineer's design at the completion of the Schematic Design and Design Development phases and at completion of the stages of Construction Documents as described in Article 15. Comments concerning corrections or amendments to the Plans and Specifications will be furnished in writing to the Architect/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 Architect/Engineer to halt production during design review.

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

2.12 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 ensure 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 Architect/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 Architect/Engineer.

3.3 The Estimated Construction Cost does not include compensation to the Architect/Engineer and the Architect/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**

##### **Personnel Titles and Hourly Rates**

4.1 Prior to entering into any agreement between the Architect/Engineer and the Owner, and the Architect/Engineer and its consultants, the Architect/Engineer shall submit a full list of all personnel titles and the hourly wage for each. The initial list is attached hereto as Exhibit "A". The hourly rates contained therein may be adjusted annually in accordance with the usual and customary salaries of the architectural profession in the area of Architect/Engineer's office, to rates mutually approved by the Owner and the Architect/Engineer.

#### **Article 5**

##### **Reimbursable Services**

5.1 Reimbursable Services are in addition to the Compensation for Basic Services and Additional Services. These include actual not-to-exceed expenditures made by the Architect/Engineer and the Architect/Engineer's consultants incurred solely and directly in connection with Architect/Engineer's performance of its services hereunder for the following expenses:

5.1.1 Fees paid for for Texas Accessibility Standards review.

5.1.2 Printing costs.

5.1.3 Other items agreed to by the Owner in writing.

5.2 Expenses not allowed for reimbursement include the cost of review documents required to be provided to the Owner under Article 14, telephone charges, cell phone and PDA charges, FAX service, alcoholic beverages, laundry, car washes, valet service, entertainment and any non-project related items.

5.3 Owner shall pay a mark-up not to exceed ten percent (10%) on those reimbursable identified in 5.1.1 through 5.1.3 above. A mark-up shall not be paid on lodging, meals or travel expenses. Architect/Engineer shall submit receipts for all reimbursable services along with any reimbursement request.

5.4 Owner must authorize all Reimbursable Services prior to the performance of the reimbursable item. Charges for Reimbursable Services must not exceed the established category amounts unless authorization, in writing, is obtained from the Owner.

#### **Article 6**

##### **Basis of Compensation**

The Owner shall compensate the Architect/Engineer for the services provided in accordance with Article 7. Payments to the Architect/Engineer shall be as follows:

6.1 **Basic Services Fee**

6.1.1 For Basic Services, as described in Article 1, and including all disciplines identified in Paragraph 15.1 as part of Basic Services, Architect/Engineer's fee shall be a negotiated Basic Services Fee to cover all costs and profit.

6.1.2 The Architect/Engineer's Basic Services Fee will be based on the Amount Available for the Construction Contract identified in the Request for Qualifications. If the AACC is increased by more than 20%, the Architect/Engineer is entitled to an equitable adjustment in its Basic Services Fee.

6.1.3 In multiple package projects, the Basic Services Fee for each package shall be determined in a manner agreed to by A/E and Owner. The Architect/Engineer's total Basic Services Fee will be the sum of the basic services fees for all packages.

6.1.4 If the description of the Architect/Engineer's Basic Services is changed materially, the applicable fee shall be adjusted equitably.

## **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 the Architect/Engineer's fee for basic services related to the eliminated portion of the work, to the extent such services are provided, shall be negotiated with the Owner.

6.2.2 For increases in the scope of Work of the Project that occur after commencement of the Construction Documents Phase, the fee for the additional Basic Services required will be negotiated with the Owner.

## **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 Architect/Engineer, or its consultants, the fee for the additional Basic Services required will be negotiated with the Owner.

## **6.4 Additional Services**

6.4.1 For additional services of the Architect/Engineer, that are not Basic Services, due to changes in Project scope, the Architect/Engineer's fee shall be a negotiated amount agreeable to Architect/Engineer and Owner.

6.4.2 For additional services of the Architect/Engineer's consultants, that are not Basic Services, due to changes in Project scope, the Architect/Engineer's fee shall be calculated as an amount negotiated by the Owner and the Architect/Engineer not to exceed 1.10 times the amount that the consultant bills the Architect/Engineer for the additional services.

## **6.5 Reimbursable Services**

6.5.1 For reimbursable services, as described in Article 5, and any other items included in Article 15 as Reimbursable Services, the Architect/Engineer's reimbursement shall be calculated as



an amount not to exceed 1.10 times the amounts actually expended by the Architect/Engineer and the Architect/Engineer's consultants in the interest of the Project.

6.5.2 If the Owner and the A/E are unable to agree on the fee changes in scope or change order services under paragraph 6.2 and 6.3, respectively, the A/E shall not suspend performance and the amount that is acceptable to both parties shall be paid. Any additional amount claimed by the A/E shall be submitted to Owner as a claim under Article 14.13 (Dispute Resolution).

## **Article 7**

### **Payments to the Architect/Engineer**

#### **7.1 Payments for Basic Services**

7.1.1 Payments for Basic Services shall be made 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. Each Statement for Architectural/Engineering Services must be accompanied by an HSP-Prime Contractor Progress Assessment Report in the form located at <http://window.state.tx.us/procurement/prog/hub/hub-forms/ProgressAssessmentReportForm.xls>

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 Architect/Engineer of any of Architect/Engineer's obligations or liabilities with respect to such services.

7.1.3 Architect/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 Architect/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 Architect/Engineer, or Architect/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 Architect/Engineer, or Architect/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 Architect/Engineer as unsettled at the time of the final request for payment.

7.1.6 Payment of A/E's invoice is subject to the Texas Prompt Payment Act, Chapter 2251, *Texas Government Code*.

7.1.7 All payments to A/E shall be by electronic direct deposit. A/E is required to complete and submit to Owner a Vendor Direct Deposit Authorization prior to first payment request. Form can be accessed at [www.window.state.tx.us/taxinfo/taxforms/74-176.pdf](http://www.window.state.tx.us/taxinfo/taxforms/74-176.pdf).

#### **7.2 Payments for Additional Services and Reimbursable Services**

Payments for the Architect/Engineer's Additional Services and for Reimbursable Services shall be made monthly upon presentation of the Architect/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 Architect/Engineer if any one or more of the following conditions precedent exist:

- a) Architect/Engineer is in breach or default under this Agreement;
- b) 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;
- c) Architect/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 Architect/Engineer;
- d) 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
- e) Architect/Engineer has failed to achieve a level of performance necessary to maintain the project schedule.
- f) Architect/Engineer fails to comply with conditions set forth in the HUB Subcontracting Plan, including but not limited to the submission of the HSP - Prime Contractor Progress Assessment Report with each monthly invoice.

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

## **Article 8**

### **Architect/Engineer Accounting Records**

8.1 Records of Reimbursable Services and expenses pertaining to Additional Services and services performed on the basis of hourly rates 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 Architect/Engineer's billings, certificates, and statements, either before or after payment by (1) inspecting the books and records of Architect/Engineer during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Architect/Engineer's business employees; (4) visiting the Project site; and (5) other reasonable action.

8.2 Records of Architect/Engineer costs, reimbursable services 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 Architect/Engineer 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 Architect/Engineer whether the Project for which they are made is executed or not. The Owner shall be permitted to retain copies, including digital and reproducible copies, of model(s), model data, schedules and Drawings and Specifications for information and reference in connection with the Owner's use and occupancy of the Project upon payment of the amounts due under this Agreement. 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 model(s), model data, schedules and Drawings and Specifications, including the originals thereof, and the ideas and designs contained therein, for any purpose related to the construction, maintenance or use of the Project and for informational purposes for any future project by the Owner, regardless of whether Architect/Engineer remains as the Architect/Engineer, has resigned, this Agreement has been terminated, Architect/Engineer's scope of services has been modified, or the services herein have been completed. If this Agreement is terminated, Architect/Engineer hereby consents to the employment by Owner of a substitute architect/engineer to complete the services under this Agreement. The Architect/Engineer and its consultants shall not be liable for any use of such information that are inconsistent with the purposes for which the Architect/Engineer provided such information or changes made by the Owner to the model(s), model data, schedules and Drawings or Specifications or for claims or actions arising from the Architect/Engineer's incomplete services or from any such alternative use or changes on projects in which the Architect/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 Architect/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 Architect/Engineer.

10.3 In the event of termination not the fault of the Architect/Engineer, the Architect/Engineer shall be compensated for all services satisfactorily performed to the termination date, together with approved Reimbursable Services then due, provided Architect/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 Architect/Engineer prior to termination.

10.4 A termination under this Article shall not relieve Architect/Engineer or any of its employees of liability for violations of this Agreement, or any willful, negligent or accidental act or omission of Architect/Engineer. The provisions of Article 9 hereof shall survive the termination of this Agreement. In the event of a termination under this Article, Architect/Engineer hereby consents to employment by Owner of a substitute architect/engineer to complete the services under this Agreement.

10.5 As of the date of termination of this Agreement, Architect/Engineer shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by Architect/Engineer in connection with Architect/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 Architect/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 Architect/Engineer, and Architect/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. The Architect/Engineer shall not, in connection with any assignment by the Owner be required to execute any documents that increase the Architect/Engineer's contractual or legal obligations or risks, or the availability or costs of its professional or general liability insurance.

#### **Article 12 Extent of Agreement**

This Agreement supersedes all prior agreements, written or oral, between Architect/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 Architect/Engineer.

#### **Article 13 Business Ethics Expectation**

13.1 During the course of pursuing contracts with Owner and while performing contract work in accordance with this Agreement, Architect/Engineer agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the Owner's best interests.

13.2 Architect/Engineer shall take reasonable actions to prevent any actions or conditions which could result in a conflict with Owner's best interests. These obligations shall



apply to the activities of Architect/Engineer's employees, agents, subconsultants, subconsultants' employees and other persons under their control.

Architect/Engineer's employees, agents, subconsultants (and their representatives) shall not make or offer, or cause to be made or offered, any cash payments, commissions, employment, gifts valued at \$50 dollars or more, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to Owner's representatives, employees or their relatives.

Architect/Engineer's employees, agents and subconsultants (and their relatives) shall not receive or accept any cash payments, commissions, employment, gifts valued at \$50 dollars or more, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of contractors, subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the Project.

13.3 Architect/Engineer agrees to notify Robby DeWitt, Associate Director for Finance and Administration within 48 hours of any instance where the Architect/Engineer becomes aware of a failure to comply with the provisions of this Article.

13.4 Upon request by Owner, Architect/Engineer agrees to provide a certified Management Representation Letter executed by an Architect/Engineer representative selected by Owner in a form agreeable to Owner stating that the representative is not aware of any situations violating the business ethics expectations outlined in this Agreement or any similar potential conflict of interest situations.

13.5 Architect/Engineer agrees to include provisions similar to this Article in all contracts with subconsultants receiving more than \$25,000 in funds in connection with the Project.

#### **Article 14**

##### **Miscellaneous Provisions**

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

14.2 **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas, without giving effect to principles of conflicts of law.

14.3 **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 shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

**14.4 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.

**14.5 Independent Contractor.** Architect/Engineer acknowledges that it is engaged as an independent contractor and that Owner has no responsibility to provide Architect/Engineer or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Architect/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. Architect/Engineer hereby agrees to make Architect/Engineer's own arrangements for any of such benefits as Architect/Engineer may desire and agrees that Architect/Engineer is responsible for all income taxes required by applicable law.

**14.6 Child Support Certification.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

**14.7 Eligibility Certification.** A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the Specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: "Under Section 2155.004, *Texas Government Code*, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

**14.8 Franchise Tax Certification.** If Architect/Engineer is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Architect/Engineer certifies that it is not currently delinquent in the payment of any franchise taxes or that Architect/Engineer is exempt from the payment of franchise taxes.

**14.9 Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, Architect/Engineer agrees that any payments owing to Architect/Engineer under this Agreement may be applied directly toward certain debts or delinquencies that Architect/Engineer owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

**14.10 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"). If the Legislature fails to appropriate or allot the necessary funds then Owner will issue written notice to Architect/Engineer and Owner may terminate this Agreement without further duty or obligation hereunder. Architect/Engineer acknowledges that appropriation of funds is beyond the control of Owner.

**14.11 Proprietary Interests.** All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Architect/Engineer in the performance of services for Owner, which is not generally known to the public, shall be confidential, subject, however, to the Owner's obligations under the Texas Public Information Act. Architect/Engineer shall not, beginning on the date of first association or communication between Owner and Architect/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 Architect/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, Architect/Engineer shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Architect/Engineer as an independent contractor of Owner in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of Owner. Architect/Engineer shall obtain agreements similar to those contained in this Paragraph from persons, vendors and consultants retained by Architect/Engineer. Architect/Engineer acknowledges and agrees that a breach by Architect/Engineer of the provisions hereof will cause Owner irreparable injury and damage. Architect/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. This section shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Architect/Engineer from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Architect/Engineer to defend itself from any suit or claim.

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

**14.13 Dispute Resolution.**

14.13.1 The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Owner and Architect/Engineer to attempt to resolve any claim for breach of contract made by Architect/Engineer that cannot be resolved in the ordinary course of business. Architect/Engineer shall submit written notice of a claim of breach of contract under this Chapter to Robby DeWitt, Associate Director for Finance and Administration, who shall examine Architect/Engineer's claim and any counterclaim and negotiate with Architect/Engineer in an effort to resolve the claim.

14.13.2 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 Architect/Engineer, in whole or in part. Owner and Architect/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 Paragraph 14.13.

14.13.3 It is agreed that such process is not invoked if Owner initiates the dispute by first bringing a claim against Architect/Engineer, except at Owner's sole option. If Owner makes a claim against Architect/Engineer and Architect/Engineer then makes a counterclaim against Owner as a claim under Chapter 2260 and in compliance therewith, the Owner's original claim against Architect/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.

**14.14 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:

Robby DeWitt  
Associate Director for Finance and Administration  
Texas A&M Forest Service  
200 Technology Way, Suite 1120  
College Station, Texas 77845

With Copies to:

Alan Degelman  
Purchasing Department Head  
Texas A&M Forest Service  
200 Technology Way, Suite 1120  
College Station, Texas 77845

Jimmy Dunn  
Texas A&M AgriLife Construction Engineer  
Texas A&M AgriLife  
578 John Kimbrough Blvd, Rm 555  
College Station, Texas 77843-2147



If to Architect/Engineer: Lucy Begg  
Thoughtbarn, LLC  
4805 Red Bluff Road, Studio A  
Austin, Texas 78702

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

**14.15 Authority to Act.** Architect/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 Architect/Engineer has been duly authorized to act for and bind Architect/Engineer.

**14.16 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.

**14.17 Venue.** This Agreement is performable in the county in which the Project is located. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against Owner shall be in the county in which the primary office of the chief executive officer of Owner is located.

**14.18 Non-Waiver Provisions.** Owner expressly acknowledges that Owner is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Owner of its right to claim such exemptions, privileges, and immunities as may be provided by law.

**14.19 Previous Employment.** Architect/Engineer acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits Owner from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If Architect/Engineer is an individual, by signing this Agreement, Architect/Engineer certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

**14.20 Public Information.** Architect/Engineer acknowledges that Owner is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

Upon Owner's written request, Architect/Engineer will provide specified public information exchanged or created under this Agreement for or on behalf of A&M System to Owner in a non-proprietary format acceptable to Owner.

Architect/Engineer acknowledges that Owner **may be** required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

Architect/Engineer acknowledges that the requirements of Subchapter J, Chapter 552 *Texas Government Code*, (added by SB 943 during the 86<sup>th</sup> Legislative Session) may apply to this Agreement and Architect/Engineer agrees that this Agreement can be terminated if the Architect/Engineer knowingly or intentionally fails to comply with a requirement of that subchapter

**14.21 Certification regarding Boycotting Israel.** Architect/Engineer acknowledges that Owner is obligated to comply with Chapter 2270, *Texas Government Code*. By executing this Agreement, Architect/Engineer certifies it does not and will not, during the performance of this Agreement, boycott Israel. Architect/Engineer acknowledges this Agreement may be terminated if this certification is inaccurate.

**14.22 Certification regarding Business with Certain Countries and Organizations.** Architect/Engineer acknowledges that Owner is obligated to comply with Subchapter F, Chapter 2252, *Texas Government Code*. By executing this Agreement, Architect/Engineer certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Architect/Engineer acknowledges this Agreement may be terminated if this certification is inaccurate.

**14.23 Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

## **Article 15**

### **Other Conditions or Services**

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

**15.1 Basic Services.** The Architect/Engineer's Basic Services are those services described in paragraphs 1.2 through 1.7 for which compensation shall be the Basic Services Fee described in this Agreement and shall include the following disciplines:

- a. Architectural Services
- b. Structural Engineering Services
- c. Mechanical Engineering Services
- d. Electrical Engineering Services
- e. Plumbing Engineering Services
- f. Cost Estimating

**15.2 Reimbursable or Additional Services.** The services identified in the following list are not included in Basic Services.

- a. Printing costs
- b. Use of Registered Accessibility Specialist for preliminary plan reviews

**15.3 Basis of Compensation**

**15.3.1 Basic Services.**

The initial Amount Available for the Construction Contract (AACC) for the Project is

Two Million and no/100 dollars (\$2,000,000.00).

The negotiated Basic Services Fee for the Project is

Two Hundred Eighty-Two Thousand Four Hundred and no/100 dollars (\$282,400.00)

**15.3.2 Reimbursable Services.**

Printing costs  
Use of Registered Accessibility Specialist for preliminary plan reviews  
Other services identified in Para. 6.2 through 6.4.2, as may be needed  
and agreed to by owner

The maximum allowable cost on this Project for Reimbursable Services identified in Articles 5 and 6, as approved by the Owner is:

**Maximum Reimbursable Expense Amount: \$17,600**

**15.3.3 Maximum Contract Sum**

Basic Services Fee amount (Para 15.3.1)	\$ <u>282,400</u>
<i>plus</i>	
Maximum Reimbursable Expense Amount (Para 15.3.2)	\$ <u>17,600</u>
<b>MAXIMUM CONTRACT SUM:</b>	<b>\$ <u>300,000</u></b>

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

Pre-Design & Programming Phase	3%
Schematic Design Phase:	14%
Design Development Phase:	21%
Construction Documents Phase:	33%
Bidding or Negotiation Phase:	2%

Construction Phase: 27%

**15.5 Review Stages.** The Architect/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%, 100%


**15.6 Estimated Construction Costs.** The Architect/Engineer shall submit Estimated Construction Costs as described in Subparagraph 1.1.19 at completion of the Pre-Design & Programming Phase and completion of the Design Development Phase

**[SIGNATURES PROVIDED ON FOLLOWING PAGE]**

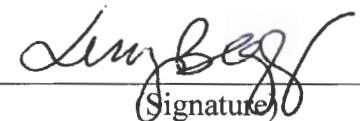


**IN WITNESS WHEREOF**, the parties have executed this Agreement effective as of the day and year first written above.

BOARD OF REGENTS OF  
THE TEXAS A&M UNIVERSITY SYSTEM  
(THE OWNER)

By   
Director, Texas A&M Forest Service  
Date 12-3-2020

THOUGHTBARN, LLC  
(THE ARCHITECT/ENGINEER)

By   
(Signature)  
Lucy Begg

Date 12/02/20

APPROVAL RECOMMENDED:

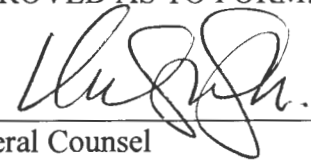
  
Associate Director for Finance & Administration  
Texas A&M Forest Service

Date 12/3/20

The Texas Board of Architectural  
Examiners, PO Box 12337, Austin, Texas  
78711 or 333 Guadalupe, Suite 2-350,  
Austin, Texas 78711, telephone (512) 305-  
9000, has jurisdiction over complaints  
regarding individuals licensed under  
Chapter 1051, Texas Occupations Code.

Name(s) of individual(s), sole proprietors,  
partner(s), shareholder(s) or owner(s) with  
an ownership interest of at least 25% of the  
business entity executing this Contract.

APPROVED AS TO FORM:

  
Asst General Counsel

Date 12/03/2020

Name: ROBERT GAY

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

EXHIBITS

Ex A      Thoughtbarn Proposal for Architectural Services, revised 10/22/20

**EXHIBIT A**  
**THOUGHTBARN PROPOSAL FOR ARCHITECTURAL SERVICES, rev. 10/22/20**

[Insert Proposal Here]



# THOUGHTBARN<sup>LLC</sup>

4805 RED BLUFF RD, STUDIO A, AUSTIN, TX, 78702 / 512.386.1579 / [WWW.THOUTHBARN.COM](http://WWW.THOUTHBARN.COM) / [INFO@THOUTHBARN.COM](mailto:INFO@THOUTHBARN.COM)

## PROPOSAL FOR ARCHITECTURAL SERVICES (EXHIBIT A)

TO: **TEXAS A&M FOREST SERVICE**  
PROJECT: **TFS OFFICE BUILDING**  
DATE: **11/25/20 [rev3 - final]**

### 1. PROJECT PARTIES & LOCATION

The parties in this Agreement are Thoughtbarn LLC (hereinafter referred to as 'Architect') and Texas A&M Forest Service (hereinafter referred to as 'Client'). The Agreement sets out the understanding between Client and Architect regarding design services to be rendered by Architect for the following project (hereinafter referred to as 'Project'):

*Texas A&M Forest Service Office, 155 Texas Forest Service Loop, Lufkin, TX, 75904.*

### 2. PROGRAM & DESIGN REQUIREMENTS

It is understood that the Project has the following characteristics and objectives:

- **Overall:** New one-story office building for approximately 40 TFS staff in Hudson (Lufkin), TX, with new 100-space parking lot.
- **Project Site:** TFS-owned property with existing parking lot, office building and warehouses (see attached exhibit for anticipated project location on site).
- **Building Size:** Estimated gross square footage: 13,340sf, assignable square footage: 9,820sf (per TFS RFQ).
- **Concept:** Building to showcase mass timber products made from southern yellow pine, with exposed structure and MEP services, and generous daylighting.
- **Program:** Building program to include combination of reception area, conference room, training room, library, private offices, kitchen and related support spaces (per TFS RFQ Addendum #2).
- **Building Standards:** Building to meet state-adopted building and energy codes, TAS standards, SECO Energy and Water Conservation Design Standards for state-funded buildings (per TAC Title 34, Part 1, Chapter 19, Subchapter C, Rule 19.32 and 19.34). Building to be exempt from Texas A&M Facility Design Guidelines.
- **Budget:** Allocated building construction cost (per TFS RFQ): \$2 million (\$150/sf).
- **Schedule:** To be defined in Pre-Design & Programming phase.

### 3. SCOPE OF ARCHITECTURAL SERVICES

- **Pre-Design & Programming**
  - Visit Project site to gain familiarity with existing conditions and context, including natural features, topography, utilities, access, and surrounding development.
  - Assist Client with collection of any outstanding site or program data required for Project. Survey and geotech report to be provided by Client.
  - Facilitate work session with Client to review Project, Design and Detail Space Requirements (per RFQ Addendum #2) and identify/define any additional requirements for the Project.
  - Coordinate with Civil Engineer on site and zoning evaluation with an analysis of the building program. Review existing parking, vehicular and fire dept access, grading and drainage, location of existing utility services.
  - Develop (2-3) preliminary plan layouts to evaluate program adjacencies, site relationships and opportunities





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to optimise structural and program efficiencies.

- Coordinate with Cost Estimator on feasibility analysis of estimated Project budget by preparing comprehensive line-item cost estimate for project based on known and assumed specifications and quantities, using database of actual bid costs from comparable projects in the region and preliminary pricing from anticipated suppliers.
- Following budget feasibility analysis, if necessary advise on alternate strategies for achieving Project Program & Design Requirements by adjusting program, material strategy and/or budget parameters.
- Assemble concept and precedent images to set material direction/character of Project.
- Prepare preliminary project schedule for design, permitting and construction.
- Review Pre-Design/Programming materials with Client; agree on updates, if any, to Program & Design Requirements.

*(2) Meetings: #1 - Kick-off mtg; #2 - Programming Review*

*Schedule: 3 weeks*

- **Schematic Design**

- Develop and explore building design options to fulfill Program & Design Requirements, as well as sustainable design considerations in building orientation, program organization, material choices and aesthetics.
- Prepare scaled Schematic Design Documents - site plan, floor plan, preliminary elevations & building sections.
- Develop a digital 3D model to explore design strategies and provide (6-8) conceptual-level exterior and interior 3D views of proposed Schematic Design.
- Consult with Structural and MEP Engineers on preliminary selections of major building systems and construction materials.
- Coordinate with Civil Engineer on preliminary grading, drainage and utility plans.
- Review Schematic Design proposals for compliance with building codes and any other Client-mandated standards.
- Review Schematic Design materials with Client, revise as necessary per Client feedback (one round of revisions included in base fee).

*(2) Meetings: #1 - 75% SD Review; #2 - 100% SD Review*

*Schedule: 3 weeks*

- **Design Development**

- Based on Client's approval of Schematic Design Documents, prepare Design Development Documents - site plan, building floor plans, life safety plans, reflected ceiling plans, exterior elevations, building sections, window/door schedules, typical horizontal/vertical assemblies.
- Coordinate Design Development Documents with Structural, MEP and Civil Engineers.
- Compile Outline Specifications that identify major materials and systems and generally establish their quality levels.
- Provided updated 3D views of building exteriors and interiors to reflect development of design.
- Coordinate with Cost Estimator to update the conceptual Pre-Design cost estimate to reflect Design Development Documents.
- Review Design Development Documents with Client and revise as necessary per Client feedback.

*(2) Meetings: #1 - 50% DD Review; #2 - 95% DD Review*

*Schedule: 8 weeks*

- **Construction Documents**

- Based on Client's approval of Design Development Documents, prepare Construction Documents in detail suitable for bidding and construction (further development of Design Development Documents, plus wall sections, interior elevations, exterior envelope details, interior details, schedules (material/finish/lighting & plumbing fixtures/equipment/door hardware), plus Specifications detailing the quality levels and performance criteria of materials and systems.



# THOUGHTBARN<sup>LLC</sup>

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- Coordinate Construction Documents with Structural, MEP and Civil Engineers.
- Coordinate with Client and Client's Consultants to integrate all AV/IT requirements into Construction Documents.
- Incorporate design requirements of governmental authorities with jurisdiction over the Project into the Construction Documents.
- Coordinate with Cost Estimator to update the conceptual cost estimate at issue of 100% Construction Documents.
- Review Construction Documents with Client, revise as necessary per Client feedback and request Client's final approval.

*Meetings: Bi-weekly during Construction Documents phase*

*Schedule: 8 weeks*

- **Permitting**

- Prepare Construction Documents for any required approvals by state authorities with jurisdiction over the Project.
- Submit Construction Documents for Texas Accessibility Standards Review.

- **Bidding & Negotiation**

- Assist Client in establishing a list of prospective Contractors to bid the Project.
- Prepare responses to questions from prospective bidders and provide clarifications and interpretations in the form of addenda.
- Assist Client in reviewing Contractor bids to determine selected Contractor.

- **Construction Administration**

- Attend weekly meetings by phone or video conference between Client, Architect and Contractor during Construction phase.
  - Perform periodic site observations\* to become generally familiar with the progress and quality of Construction, and to determine, in general, if the work observed is in accordance with the Contract Documents.
- \*A total of (9) site visits by Architect during Construction Administration are included in the base fee, as well as (3) site visits each by Structural, MEP Engineers. Any additional site visits required during construction will be charged as Additional Services.*
- Provide site reports that inform the Client about the progress and quality of Construction and report any known deviations from the Contract Documents or construction schedule, or defects and deficiencies observed in the work.
  - Respond to Contractor's RFIs (Requests for Information) and review product submittals in a timely manner.
  - Review and approve Certificate for Payments from Contractor.
  - Assist with Project Completion by issuing Certificate of Substantial Completion, verifying punch list and issuing a final Certificate of Payment based upon a final inspection indicating, to the best of Architect's knowledge, the work complies with requirements of the Contract Documents.

## 4. CONSULTANTS

- Architect to contract directly with Structural Engineer, MEP Engineer, Cost Estimator and Accessibility Reviewer.
- Technology, Phone and Security to be contracted directly by Client.



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## 5. ADDITIONAL SERVICES

- **Work charged as Additional Services**

- Redesign or significant revisions to the Schematic Design, Design Development or Construction Documents after the phase of work has been approved.
- Participation in design reviews by (non-TFS) third-party stakeholders, or design revisions requested by (non-TFS) third-party stakeholders.
- Reviewing requests for substitutions during bidding process and preparing addenda identifying approved substitutions to prospective bidders.
- Preparation of change orders not caused by the Architect.
- Site visits by Architect to Lufkin, TX, other than (1) site visit during Design Phase and (9) visits during Construction Phase, or site visits by Structural, MEP Engineers beyond (3) each included in Basic Services.
- Marketing or special presentation materials (such as 3D renderings) requested by Client, other than those produced as part of basic Schematic Design or Design Development Services.



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## 6. COMPENSATION

The proposed fees for Design Services are as follows:

DESIGN SERVICES [Architect]*	DESIGN FEE
PreDesign/Programming	\$5,000 (1 site visit included)
Schematic Design	\$22,500
Design Development	\$35,000
Construction Documents	\$55,000
Permitting	inc. in Constr. Docs
Bidding & Negotiation	\$2,500
Construction Administration	\$45,000 (9 site visits included)
<b>TOTAL</b>	<b>\$165,000</b>

DESIGN SERVICES [Consultants**]	DESIGN FEE
Structural Engineering	\$39,000 (3 site visits included)
MEP Engineering	\$55,400 (3 site visits included)
MEP Additional Services	
SECO Compliance	\$7,500
Energy Model (for SECO)	\$7,500
Cost Estimating	\$8,000
<b>TOTAL</b>	<b>\$117,400</b>

\* Design fees are based on Client construction budget estimate of \$2,000,000. If final construction budget is increased by Client by more than 20%, Architect and Consultants retain the right to re-negotiate Design Fees to reflect increase.





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• **Schedule of Hourly Invoice Rates (Architect):**

Principal Architect:	\$120/hr
Senior Designer:	\$95/hr
Junior Designer:	\$80/hr

*Note: Adjustments to the hourly rates may be made January 1 of each year, but any such changes shall not exceed 10% per annum.*

• **Travel Rates:** Additional site visits to Lukfin beyond the number specified as part of Basic Services will be billed at the following rates:

Principal Architect:	\$950/day
Senior Designer:	\$750/day
Junior Designer:	\$600/day

• **Billing Schedule:** Progress payments for Design Services will be billed monthly for the percentage of services completed to that date. Payments are due within 30 calendar days of receipt of invoice.

• **Reimbursables:** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include actual expenditures made by Architect, Architect's employees and Consultants in the interest of the Project, charged at a multiple of 1.1 the expense incurred, including:

- Expense of reproductions, postage, handling and delivery of drawings
- Travel expenses, including airfare, rental car, taxis, hotels, meals or mileage reimbursements (at cost)
- Required review fees or agency permitting fees (at cost)