



## **THE TEXAS A&M UNIVERSITY SYSTEM**

Office of Procurement and HUB Program

**REQUEST FOR QUALIFICATIONS  
CONSTRUCTION MATERIALS TESTING SERVICES  
RFQ NUMBER: RFQ-01-FPC-26-269**

**QUALIFICATIONS SUBMITTAL MUST BE RECEIVED BEFORE:  
2:00 P.M. Central Time on July 15, 2026**

**EMAIL RFQ RESPONSES TO:  
[SOPROCUREMENT@TAMUS.EDU](mailto:SOPROCUREMENT@TAMUS.EDU)  
SUBJECT LINE: FPC-26-269 CONSTRUCTION MATERIALS TESTING SERVICES**

**NOTE:** SUBMITTAL must be received by The Texas A&M University System Office of Procurement and HUB Program before the date and time specified for receipt of submittal as stated within Section 2.4 of this RFQ. After the due date and time, only the names of respondents will be made public.

**REFER INQUIRIES TO:**  
Jeff Zimmermann, Executive Director  
Procurement and Business Services | VetHUB Program  
The Texas A&M University System  
[soprocurement@tamus.edu](mailto:soprocurement@tamus.edu)

All submittals shall become the property of the State of Texas upon receipt. Submittals may be subject to public review after contracts have been executed. Refer to Section 5.G. for more information regarding public information.

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## **SECTION 1**

### **GENERAL**

#### **1.1 Scope**

The Texas A&M University System ("A&M System"), Office of Facilities Planning & Construction ("FP&C"), is soliciting Statements of Qualifications ("Qualifications") from companies (also hereafter referred to as "Respondent") with an established history of expertise and qualifications for Construction Materials Testing (CMT) services ("Services").

The A&M System is dedicated to the ongoing program to improve and expand all physical facilities in support of the teaching, research, and service missions of each university and agency of the A&M System.

It is the intent of the A&M System to establish a master services agreement ("Agreement") with more than one company to meet its needs. The required services shall be administered in accordance with the terms, conditions, and requirements set forth in this Request for Qualifications (RFQ) for all FP&C managed construction projects. This shall also apply to work or projects done by other A&M System universities and agencies ("Members") that may choose to utilize an awarded Respondent of this RFQ.

By submitting a response, each Respondent certifies that it understands this RFQ and has full knowledge of the scope, nature, quality, and the amount of the work to be performed, the detailed requirements of the services to be provided, and the conditions under which the services are to be performed.

#### **1.2 About the A&M System**

The Texas A&M University System is one of the largest and most impactful higher education systems in the country, with an annual budget of \$8.1 billion. Its statewide network includes 12 universities, a comprehensive health science center, eight state agencies, Texas A&M–Fort Worth and Texas A&M–RELLIS. The Texas A&M University System serves approximately 175,000 students and reaches millions more through service, research and outreach programs each year. With nearly \$1.6 billion in annual research expenditures, the A&M System fuels innovation, supports communities and drives Texas' economy forward. More information about the Texas A&M University System and all of its members can be found at <http://www.tamus.edu/about/>.

#### **1.3 Purpose**

The purpose of this RFQ is to solicit qualifications from companies who can provide construction materials testing services to the A&M System. Refer to Section 3 for the full Scope of Work and requirements.

The intent of this RFQ is to allow all interested / prospective companies to provide a sufficient amount of information that will enable the A&M System to assess the qualifications of the Respondent. To this end, each Respondent shall furnish, as a part of the qualifications, a complete general description of experience in their respective fields.

By submitting qualifications, each Respondent certifies that it understands this RFQ and has full knowledge of the scope and nature of the opportunity described herein. Each Respondent also certifies that it understands that all costs relating to preparing and responding to this RFQ will be the sole responsibility of the Respondent.

#### **1.4 Priorities/Expectations**

- (a) *Ensuring a Quality Level of Service.* This priority encompasses the quality of the level of service that can be provided to all A&M System members in a timely, cost-effective manner. A&M System is seeking a Respondent(s) that will ensure the provision of such quality in its delivery of

service through proven techniques and established practices.

- (b) *Level of Experience and Expertise.* Respondent must demonstrate its capabilities in providing the utmost level of experience and expertise to ensure a successful project as determined by A&M System.
- (c) *Delivery Efficiency.* Respondent must demonstrate its ability to deliver the required services in a timely manner while not sacrificing the quality required by a Tier I research System.

### **1.5 Performance Period**

The intention of this RFQ is to qualify companies to be included in a pool for the services defined in this RFQ. Should A&M System, in its sole discretion, enter into an Agreement with the successful Respondent(s) as a result of this RFQ, the Agreement shall be effective as of the date that is agreed upon by A&M System and successful Respondent(s). A&M System anticipates that the initial term of any such Agreement will extend for three (3) years, with the option to renew for up to two (2) additional one (1) year terms, providing all parties mutually agree on the extension. Any extensions shall be at the same terms and conditions plus any approved changes to be determined by A&M System and negotiated in writing with the successful Respondent(s).

## SECTION 2 INSTRUCTION FOR RESPONDENTS

### 2.1 General Information

The A&M System is soliciting submittals from qualified companies who have significant experience in providing Construction materials Testing services for institutions of higher education. These basic services are outlined in the Scope of Work (Section 3) and are intended to be provided under the general supervision of FP&C. However, the individual A&M System Members also have authority and option to utilize any resulting Agreement for these services.

This RFQ outlines scope and requirements in Section 3. Submittals are to be in accordance with all scope, requirements, and terms contained herein, and remain in effect a minimum of 120 days from the date of submission and may be subject to further extensions as negotiated. A statement to this effect should be contained in the Respondent's cover letter.

The Respondents selected shall have an excellent track record for providing these services relative to the size and scope of A&M System projects and shall agree to provide these services to A&M System with a top priority commitment. The A&M System may select as many Respondents as needed to ensure coverage throughout the State of Texas at the various System Members' locations.

This RFQ contains specific requests for information. Respondents are encouraged to examine all sections of this RFQ carefully, in that the degree of interrelationship between sections is critical. In responding to this RFQ, Respondents are encouraged to provide any additional information they believe relevant.

Clause headings appearing in this RFQ have been inserted for convenience and ready reference. They do not purport to define, limit or extend the scope or intent of the respective clauses. Whenever the terms "must", "shall", "will", "is required", or "are required" are used in the RFQ, the subject being referred to is to be a required feature of this RFQ and critical to the resulting submittal.

In those cases where mandatory requirements are stated, material failure to meet those requirements could result in disqualification of the Respondent's response. Any deviation or exception from any requirements or terms of the RFQ must be clearly identified by the Respondent in its submittal.

### 2.2 Calendar of Events

<b>Activity</b>	<b>Responsibility</b>	<b>Date</b>
Release of RFQ	A&M System	June 18, 2026
Deadline to Submit Questions	Respondent	July 2, 2026
Release of Addendum (if applicable)	A&M System	July 9, 2026
RFQ Responses Due	Respondent	July 15, 2026
Selection of Qualified Respondents	A&M System	TBD

The A&M System will make every effort to adhere to the above schedule. The schedule, however, is subject to change. This may be in the event that further clarification of responses or terms of contract are in the best interest of A&M System and/or in the event A&M System requires more time to assure that the selection of the Respondent is in accordance with its policies, rules and regulations, as well as actual timing needs.

### 2.3 Examination of the Request for Qualifications

Before submitting, each Respondent will be held to have examined the A&M System requirements outlined in Section 3 and satisfied itself as to the existing conditions under which it will be obligated

to perform in accordance with specifications of this RFQ.

No claim for additional compensation will be allowed due to unfamiliarity with the specifications and/or existing conditions. It shall be understood that the Respondent has full knowledge of all the existing and/or revised conditions and accepts them "as is."

## 2.4 Submittal Instructions

All qualification submittals must be received by A&M System **no later than 2:00:00 p.m. Central Time, July 15, 2026**, electronically via email to [soprocurement@tamus.edu](mailto:soprocurement@tamus.edu) with the subject line of "**FPC-26-269 – Construction Materials Testing Services**". The sent time indicated within the A&M System email server shall be used for the receipt and acceptance of the response. **Late submittals will not be considered under any circumstances.**

Submittal Format: Submission shall be saved as two (2) separate files in Adobe Portable Document Format (PDF) according to the items listed below and named as such; I) "**company name – Qualification Statement**", II) "**company name – Forms**".

## 2.5 Submittal Components

The following documents are to be returned as part of the Respondence's qualification submittal. Failure to include these sections/documents may be basis for response disqualification.

### I. Qualification Statement

- ✓ Cover Letter
- ✓ Table of Contents
- ✓ Statement of Qualifications (Section 4)
- ✓ Service Location Matrix (Exhibit C)

### II. Forms

- ✓ Signed Execution of Offer (Exhibit A)
- ✓ Signed and notarized Non-Collusion Affidavit (Exhibit B)
- ✓ VetHUB Subcontracting Plan (Section 3.4)

### Other Requirements:

- Qualification Statement shall be a MAXIMUM of twenty-five (25) pages. The cover letter, table of contents, divider pages, and the Exhibits do not count toward this maximum page count.
- Additional attachments shall NOT be included with the Qualification Statement. Only the responses provided by the Respondent to the questions identified in Section 4 of this RFQ will be used by the A&M System for evaluation.
- Submittals shall include a "Table of Contents" and give page numbers for each part of the Qualifications.
- Number all pages of the submittal sequentially using Arabic numerals (1, 2, 3, etc.).

Qualification Statement shall consist of answers to questions identified in Section 4 of the RFQ. It is not necessary to repeat the question in the Qualifications; however, **it is essential to reference the question number with the corresponding answer.**

Failure to comply with all requirements contained in this Request for Qualifications may result in the rejection of the submittal.

Note: Additional information regarding the Execution of Offer and Non-Collusion Affidavit.

- Execution of Offer: The signature in the Execution of Offer within the electronic copy shall serve as the official signature of record. Signature can be done electronically with DocuSign, Adobe or another similar tool.
- Non-Collusion Affidavit: The Respondent signature on this document may be done electronically with DocuSign, Adobe or another similar tool. An agreement may not be executed with an awarded Respondent until this document is fully signed and notarized.

## 2.6 Inquiries and Interpretations

All questions concerning this RFQ are to be directed to Jeff Zimmermann, Executive Director of Procurement & Business Services, in writing at [soprocurement@tamus.edu](mailto:soprocurement@tamus.edu). Respondent may not contact other individuals at A&M System to discuss any aspect of this RFQ, unless expressly authorized by the A&M System Procurement Office to do so.

Questions regarding the RFQ, including questions for more data or information beyond that included in this RFQ and any attachment(s), should be presented in writing. **Deadline for submission of questions is July 2, 2026.** The A&M System will publish all questions with responses according to the schedule in Section 2.2.

Responses to inquiries which directly effect an interpretation or change to this RFQ will be issued in writing by addendum/amendment and posted to the Electronic State Business Daily (ESBD) at the following site; <https://www.txsmartbuy.gov/esbd> according to the schedule in Section 2.2 above. Within the ESBD search, input Agency Number "710" and select "Posted" for the Status.

It is the responsibility of all REPONDENTS to check the ESBD for any and all addenda issued for this RFQ. All such addenda/amendments issued by A&M System prior to the time that qualifications are received shall be considered part of the RFQ, and the Respondent shall consider and acknowledge receipt of such in the Execution of Offer. Only those A&M System replied to inquiries which are made by formal written addenda/amendments shall be binding. Oral and other interpretations or clarification will be without legal effect.

## 2.7 Selection Process

It is the intention of the A&M System to utilize the information received from Respondents qualification submissions to award and form a pool of pre-qualified companies from which it may select to assist the A&M System on an as-needed basis. Each project assignment will be documented individually and will extend for as long as agreed to by the parties. A&M System will base its choice on demonstrated competence, knowledge, and qualifications of the Respondent.

The Respondent(s) selected will be the one who's experience and qualifications, as presented in response to this RFQ, establish them, in the opinion of A&M System, as well qualified and offering the greatest benefits, experience and value to A&M System, and any other relevant factor that A&M System deems relevant and would consider in selecting a RESPONDENT for award. If other considerations are equal, the A&M System may give preference to a Respondent whose principal place of business is in the state of Texas, or who will manage the contract wholly from an office in the state of Texas. Final determination for award of any resultant Agreement will be made on the overall best value to the A&M System. The A&M System may cancel this RFQ or reject Qualifications at any time prior to an award and is not required to furnish a statement of the reasons why a particular qualification was not deemed to be the most advantageous.

The A&M System, at its sole discretion, may select as many companies as deemed to be in A&M System's best interest to meet the needs throughout The Texas A&M University System. All Respondents selected will be required to sign a master agreement. The master agreement does not guarantee that a project(s) assignment will be made. Should A&M System determine in its sole discretion that only one Respondent is fully qualified, or that one Respondent is clearly more highly qualified than the others under consideration, an agreement may be negotiated and awarded to that

Respondent. The award document will be an agreement incorporating by reference all the requirements, terms and conditions of the RFQ and the Respondent's qualification as negotiated.

Submission of qualifications indicates Respondent's acceptance of the evaluation techniques and the recognition that subjective judgments must be made by A&M System during the evaluation process.

It is the intent of the A&M System to qualify multiple submissions. The selection of the successful submission(s) may be made by the A&M System on the basis of the submissions initially submitted, without discussion, clarification, or modification. In the alternative, selection of the successful submission(s) may be made by the A&M System on the basis of negotiation with any of the Respondents. The A&M System shall not disclose any information derived from the submissions provided by competing Respondents in conducting such discussions.

All submissions must be complete and convey all the information requested to be considered responsive. If a submission fails to conform to the essential requirements of the RFQ, A&M System alone will determine whether the variance is significant enough to consider the submission susceptible to being made acceptable, and therefore a candidate for further consideration, or not susceptible and therefore not considered for award.

The A&M System may perform reference checks and seek further information, as needed from all Respondents whose submission the A&M System, at its discretion, considers viable, based on the initial evaluation and ranking. The Respondent's response to this requirement officially authorizes the A&M System to contact these organizations to discuss the services and other considerations which the Respondent has provided to such organizations and authorizes the organizations to provide such information to the A&M System and Respondent shall and hereby does release and hold harmless the A&M System, the state of Texas, and the organization of any and all liability whatsoever, in connection with providing and receiving all such information. Any negative responses received from reference checks may be grounds for disqualification of the submission.

The A&M System reserves the right to accept or reject any or all offers, to waive informalities and technicalities, to accept qualifications considered most advantageous, and/or to make the award to the most responsive Respondent(s).



## **SECTION 3**

### **SCOPE OF WORK**

#### **3.1     Goal**

The A&M System is soliciting Statements of Qualifications from Respondents with an established history of expertise and qualifications for Construction Materials Testing (CMT) services. It is the intent of the A&M System to contract with multiple Respondents to provide a pool of companies that can provide these services for all FP&C managed construction projects. Other A&M System Members may elect to utilize this pool for work or projects managed by them at their respective institution.

The services to be provided may include assistance with capital projects for the A&M System and its Members. As such, these projects must be in conformance with the A&M System policies and regulatory and statutory requirements for State of Texas public higher education facility projects. Demonstrated past experience with State of Texas public higher education facility projects will be given strong consideration in the evaluation process.

#### **3.2     Services Required**

The required services of a Respondent chosen for a particular project shall consist of working under the direct supervision of the A&M System's staff (Owner).

The selected Respondents will be responsible for providing all necessary equipment including but not limited to computers, software, cameras, and cell phones as part of their overhead and without separate reimbursement. Activities for which CMT services may be requested include any or all of the following:

- (a) Attend pre-construction conferences as requested.
- (b) Be able to perform standard material tests, including the following at a minimum:
  - Concrete cylinder compression test (ASTM C31 & C39) including slump, temperature, unit weight, and air content (ASTM C143, C172, C231/C173, C1064)
  - Review and evaluate mix designs
  - Determining Floor Flatness and Floor Levelness (ASTM E1155)
  - Cement mortar compression test (ASTM C109)
  - Classification of Soils for Engineering Purposes (ASTM D2487)
  - Sieve analysis (ASTM C136 & C117)
  - Atterberg limits (ASTM D4318)
  - Sulfate content (Tex-145-E)
  - Proctors (ASTM D698, D1557, Tex-113-E, Tex-114-E)
  - Wet ball mill (Tex-116-E)
  - Triaxial (Tex-117-E)
  - Lime series PI and Ph methods (Tex-112-E and ASTM D6276)
  - In-place density/moisture (ASTM D2938)
  - Hot Mix Asphaltic Concrete (HMAC) density, stability, and asphalt content (ASTM D2950, D2041, D2726, D5444)
  - Non-destructive testing of structural welds
- (c) Be able to perform the following observations, as a minimum:
  - Visual comparisons of footing sub grades to verify design bearing capacities, including applicable reports
  - Visual witnessing of piers and piles, including applicable reports.

- Visual observation of structural welds, including reports.
- (d) Be able to perform the following inspections, at a minimum:
  - Structural steel welds.
  - Structural special inspections.
  - Provide both typed reports and/or test results in digital PDF form via email.
  - Use the A&M System's Project Management Information System (PMIS).
- (e) Provide material, observation, and inspection reports within 48 hours of test or site visit to the Owner, Architect, Engineer, and the General Contractor in PDF format. If required by project, provide reports to PMIS.
- (f) When work is found to be in non-conformance, document the deficiencies and promptly provide notification of the deficiencies to the Owner, Architect, Engineer, and the General Contractor prior to leaving the site. Include tracking of deficiencies in reports.
- (g) All services shall be under the direction of a Texas Registered Professional Engineer.
- (h) Provide and use proper personal protective equipment (safety harness, vest, etc.) and tools to accomplish testing, observations, and inspections.
- (i) Notify the Owner's field project manager prior to visit if ladders, lifts, or other equipment will be needed to perform inspection/ testing. Directly notify the General Contractor the date and time of the inspection/testing so the subcontractors can make the site available.

The A&M System reserves the right on each assignment to authorize all or any part of the above subject areas and/or work tasks as the A&M System deems necessary for the individual project.

**Items to Note:**

- If any of the services required in this RFQ, with considerations noted below, cannot be accomplished by one prime firm (Respondent), the balance of work is to be subcontracted and the Respondent is to follow the process in Section 3.4. For any given project one prime firm or one prime firm with subcontractors will need to **provide all of the requested services**.
- The scope to be performed will be set forth in each project authorization and be based on established normalized unit rates and a proposal of units from the Respondent for the particular assignment. A purchase order will prescribe a scope of work with a not-to-exceed fee for each assignment.
- CMT services required by A&M System members will vary and will be determined on a project- by-project basis.
- Trimble Unity Construct (eBuilder) is the PMIS and the selected Respondent may be expected to minimally utilize this web based program. If requested to utilize this system, access will be provided at no cost to the Respondent. Training in College Station (or virtually) will also be provided at no additional cost.

### **3.3 Project Assignments**

Construction Material Testing services will be assigned when required to a project or projects from the pool of Respondents established by this RFQ. Note that inclusion in the pool is not a guarantee of work or project assignments. Below are some of the factors considered by FP&C regarding assignment of a project or projects.

- Location of Respondent in relation to the project(s)
- Budget considerations
- Work distribution within the pool as practical
- Other factors as determined by FP&C for a specific project assignment

The A&M System reserves the right on each assignment to authorize all or any part of the above subject areas and/or work tasks as the A&M System deems necessary for the individual project. The scope to be performed will be set forth in each work authorization and be based on established unit rates and a proposal of units from the Respondent for the particular assignment. A purchase order will be issued with a not-to-exceed fee for each assignment.

Depending on the scope and cost of the project, the awarded Respondent may be required to provide insurance.

### 3.4 **Subcontracting Plan Requirements**

The Veteran Heroes United in Business program (VetHUB or HUB) as part of the state of Texas Comptroller's Statewide Procurement Division focuses on certification of service-disabled veterans (SDV) to facilitate their growth and development and increase opportunities for contracts and subcontracts with the state of Texas. For additional information on the VetHUB program visit the following site:

<https://comptroller.texas.gov/purchasing/vendor/hub/hub-faq.php>.

The A&M System requires a state of Texas Subcontracting Plan (SP) for contracts of \$100,000 or more over the life of the contract (including any renewals), where such opportunities exist. The total expected value of this solicitation and subsequent contract is \$100,000 or more and therefore, Respondents to this RFQ are required to develop and submit a completed Subcontracting Plan form with their proposal submission. (Texas Government Code Chapter 2161, Subchapter F; 34 Texas Administrative Code Section 20.285)

A subcontracting opportunity is defined as any portion or lot of work that the Respondent cannot complete with its own equipment, supplies, materials, and/or employees. The Respondents will use the procedures prescribed below when completing the SP form.

The Respondent shall use the CMBL/VetHUB directory published on the comptroller's website to identify VetHUBs. **If the Respondent uses any alternate source, it accepts the risk that its HUB subcontracting plan may be noncompliant due to inaccurate HUB certification information.** A business listed in the VetHUB directory at the time of the good faith effort is considered a HUB for purposes of evaluating a HUB subcontracting plan, even if the business later graduates or has its HUB status revoked or expired. The VetHUB directory can be accessed via the following site:

<https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>

The A&M System VetHUB Program Office will review the information and documentation submitted and use it as a basis to determine if the plan was developed in good faith effort by the Respondent to utilize VetHUB subcontractors and/or suppliers on this project. The A&M System may reject a SP that was not developed in good faith or was not completed. The A&M System shall document the reasons for rejection in the contract file. If the A&M System finds that businesses identified in a SP are no longer HUBs, it may invite the vendor to submit a revised plan that identifies active VetHUBs.

An accepted SP form will become a part of any contract with the Respondent resulting from this solicitation. Any revisions to the SP must be approved by the A&M System VetHUB Program Office.

#### **Procedures for Completing the SP Form**

**The A&M System requires the Respondent to submit an SP form for this RFQ.** The SP form must include all subconsultants, suppliers, subcontractors, and vendors intended to be included in the Respondent's team. The A&M System has set a **VetHUB goal of 2%** for this solicitation. Refer to Attachment A for additional information and instructions.

In accordance with [34 TAC §20.285](#) the Respondent must demonstrate its good faith development of a subcontracting plan by either inviting small businesses to bid for subcontracts (the solicitation

method) or stating that it does not intend to subcontract (the self-performing method). These two methods are further described within the SP form.

The SP form to be used is located at the following site:

<https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>

For more information or assistance in properly completing the SP form for this RFQ, the Respondent may contact the A&M System at [SO-HUBProgram@tamus.edu](mailto:SO-HUBProgram@tamus.edu). Each Respondent is encouraged to submit a draft of their SP form prior to submitting their response to the RFQ for review by the A&M System. To permit adequate time for the performance of the required good faith effort, we request that all drafts be submitted at least ten (10) business days prior to the RFQ due date.

#### **AWARDED RESPONDENT REQUIREMENTS**

If the Respondent is selected and awarded a project in connection with this RFQ, the Respondent will be required to comply with all good faith effort requirements. The Respondent may be required to complete a separate project-specific HSP form which identifies the subcontracting opportunities anticipated for the scope of work defined in that agreement and subcontractors anticipated to perform each subcontracting opportunity. If required, these will be due prior to beginning performance on the scope of work.

The HSP form submitted with the proposal response will be included within the Agreement and the A&M System will monitor compliance and progress with all requirements. Per Texas Government Code 2161.253(d), if a determination is made that the Vendor failed to implement the plan in good faith, the A&M System, in addition to any other remedies, may bar the Vendor from further contracting opportunities with the A&M System.

## SECTION 4 STATEMENT OF QUALIFICATIONS

### 4.1 Statement of Qualifications

RESPONDENTS SHALL CAREFULLY READ THE INFORMATION CONTAINED IN THE FOLLOWING CRITERIA AND SUBMIT A COMPLETE STATEMENT OF QUALIFICATIONS TO ALL ITEMS. RESPONSE SHALL BE FORMATTED AS DIRECTED. INCOMPLETE QUALIFICATIONS MAY BE CONSIDERED NON-RESPONSIVE AND SUBJECT TO REJECTION.

#### 4.1.1 CRITERION ONE: RESPONDENT'S STATEMENT OF QUALIFICATIONS AND AVAILABILITY TO UNDERTAKE THE SERVICES

- (a) Provide a statement of interest including a narrative describing the Respondent's and subconsultant's qualifications and availability.
- (b) Provide a statement detailing the specific qualifications, availability, and commitment of the Respondent and subconsultants, including named assigned personnel, to successfully undertake, manage, and perform the services listed within Section 3 above. Proof of qualifications shall be provided by certifications, licenses, or other documentation in a separate tab which does not count towards the maximum number of pages allowed.
- (c) Provide a statement detailing how the Respondent and subconsultants follow and meet the requirements of ASTM E329 "Standard Specification for Agencies Engaged in Construction Inspection, Testing, or Special Inspection" and the requirement of ASTM E543 "Standard Specification for Agencies Performing Nondestructive Testing".
- (d) List the primary ACI certified personnel that would monitor concrete.
- (e) List the primary inspectors performing structural steel inspections who are currently certified AWS Certified Welding Inspectors (CWI)
- (f) List the primary inspectors performing structural special inspections who are currently certified through the International Code Council or by another nationally recognized certification program.
- (g) Provide copies of reports from inspections of facilities made during most recent inspections. Include memorandum of remedies for deficiencies reported by this inspection.
- (h) Testing Equipment must be calibrated at required and reasonable intervals by devices of accuracy traceable to either an accrediting body or accepted values of natural physical constants. Provide a statement that equipment will be kept calibrated, in good working order, and all required certificates/regulatory documents will be on file. Provide certificates/regulatory documents via an Excel spreadsheet, link or PDF copies in a separate tab which does not count towards the maximum number of pages allowed.
- (i) Provide a resume for key personnel for Respondent who will be assigned to provide services from all office locations. Limit resumes to one (1) page per person. Provide copies of any key personnel licenses and certifications. Licenses and certifications of other personnel who will be directly responsible for testing on a project may be included with the proposal for a specific project.
- (j) Identify the single point of contact for the term of this agreement and include phone number, email, and mailing address. This person will be assigned to provide proposals to the A&M System and manage the master agreement.
- (k) The Respondent shall have a Texas Registered Professional Engineer with at least five years of experience in providing CMT services as part of their team. All services shall be

under the direction of the Engineer charged with managerial responsibility. Provide the Texas PE registration(s).

- (l) Complete Exhibit C to indicate interest and ability to provide services at each of the specified Member locations. Provide which single office will service each location.

#### **4.1.2 CRITERION TWO: COMPANY PROFILE AND BACKGROUND**

- (a) Provide a brief history of the firm including all office location(s), legal status, and officers.
- (b) Provide the Respondent's organization chart to demonstrate how project personnel will be organized to fulfill requirements under this agreement.
- (c) Is the Respondent currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
- (d) Provide any details of all past or pending litigation or claims filed against the Respondent that would affect the Respondent's performance under this agreement with the A&M System.
- (e) Is the Respondent currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.
- (f) Does any relationship exist by relation, business association, capital funding agreement, or any other such kinship between the Respondent and any A&M System employee, officer, or Regent? If so, please explain.

#### **4.1.3 CRITERION THREE: RESPONDENT'S PERFORMANCE ON PAST REPRESENTATIVE PROJECTS**

List no more than three (3) examples of relevant, previous projects undertaken by the Respondent that best demonstrates the Respondent's capacity and expertise to fulfill the requirements of the stated services. Each example should be well organized, and, when applicable, identify key personnel proposed for the A&M System agreement who worked on the example project. List the projects in order of priority, with the most relevant project listed first. Provide the following information for each project listed:

- (a) Project name, location, and description.
- (b) Final Project size in gross square feet.
- (c) Type of construction (new, renovation, or expansion).
- (d) Actual start and finish dates for construction.
- (e) Description of services the Respondent provided for the project and office location.
- (f) Key subcontractors, if used.
- (g) The name of the owner's representative(s) who would be most familiar with the project and contact information including telephone number and email address.

References shall be considered relevant based on specific project participation and experience with the Respondent. The A&M System may contact the references provided or any other references deemed relevant at any time during this RFQ process.

**Note:** Examples that involve public higher education institutions are preferred. Past experience in the state of Texas and demonstrated knowledge and understanding of Texas markets is also preferred. Demonstrated experience with a variety of building and construction types and with campuses in various stages of development is also useful.

## SECTION 5 GENERAL TERMS AND CONDITIONS

- A. **TERMS AND CONDITIONS:** The A&M System reserves the right to accept, reject, modify, and/or negotiate any and all submittals received in conjunction with this RFQ. It reserves the right to waive any defect or informality in the submittals on the basis of what it considers to be in its best interests. Any submittal which the A&M System determines to be incomplete, conditional, obscure, or which has irregularities of any kind, may be rejected. The A&M System reserves the right to award to the company, or companies, which in our sole judgment, will best serve our long-term interest.
- This RFQ in no manner obligates the A&M System to the eventual purchase of any products or services described, implied, or which may be proposed, until confirmed by written agreement, and may be terminated by the A&M System without penalty or obligation at any time prior to the signing of a contract.
- The Respondent must include a formal copy of any Respondent terms and conditions applicable to this transaction. Evaluation and acceptance and/or modification of these terms and conditions by the A&M System Office of General Counsel are essential prior to execution of any resultant agreement. In the event the Respondent does not supply terms and conditions with their submittal, A&M System terms and conditions will govern this transaction.
- B. **GOVERNING LAW:** Respondent agrees that, in the event of a dispute, laws of the State of Texas will prevail.
- C. **NON-DISCRIMINATION:** The parties agree that in the performance of any contract they shall not discriminate in any manner on the basis of race, color, national origin, age, religion, sex, genetic information, veteran status or disability protected by law. Such action shall include, but is not limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation. By submitting a submittal, Respondent certifies that it will conform to the provisions of the federal Civil Rights Act of 1964, as amended.
- D. **CIVIL RIGHTS REQUIREMENTS:** All Respondents must comply with applicable civil rights laws.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting a proposal, the Respondent certifies that it does not, and will not, during the performance of any resultant Agreement, employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986, as amended.
- F. **DEBARMENT STATUS:** By submitting a proposal, Respondent certifies that it is not currently debarred from submitting submittals on contracts nor is it an agent of any person or entity that is currently debarred from submitting bids on contracts.
- G. **PUBLIC INFORMATION:** Respondent is hereby notified that the A&M System strictly adheres to all statutes, court decisions, and the opinions of the Texas Attorney General with respect to disclosure of public information. The A&M System may seek to protect from disclosure all information submitted in response to this RFQ until such time as the resultant Agreement is executed. Upon execution of the resultant Agreement, the A&M System will consider all information, documentation, and other materials requested to be submitted in response to this RFQ to be of a non-confidential and non-proprietary nature and therefore subject to public disclosure under the Texas Public Information Act, Texas Government Code, Chapter 552. Respondent will be advised of a request for public information that implicates its materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General.
- H. **ALTERNATE PROPOSALS:** A&M System reserves the right to consider alternate proposals submitted by Respondents. Alternate proposals shall be clearly marked "Alternate" with the

proposed alternates clearly defined and all pricing/cost advantages included, if applicable.

- I. ANTITRUST: Respondent hereby assigns to the A&M System, any and all claims for overcharges associated with any contract resulting from this RFQ which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973) and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).
- J. EXECUTIVE HEAD OF A STATE AGENCY AFFIRMATION: In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of the A&M System or any of its Members, (2) a person who at any time during the four years before the date of the contract was the executive head of the A&M System or any of its Members, or (3) a person who employs a current or former executive head of the A&M System or any of its Members.
- K. EXECUTIVE ORDER GA-48 CERTIFICATION: Respondent certifies that pursuant to Executive Order GA-48, Hardening of State Government, Respondent is not and, if applicable, none of its holding companies or subsidiaries are a) listed in Section 889 of the 2019 National Defense Authorization Act ("NDAA") regarding telecommunications and video surveillance; b) listed in Section 1260H of the 2021 NDAA regarding Chinese military companies in the US; c) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4 ("15 C.F.R. § 791.4 List"); or d) controlled by any governing or regulatory body located in a country on the 15 C.F.R. § 791.4 List. Respondent acknowledges that a false certification is grounds for immediate termination of any resulting contract or purchase order with no further obligation on the part of A&M System.
- L. INSURANCE: Respondent shall obtain and maintain, for the duration of any resultant Agreement or longer, the minimum insurance coverage set forth on Exhibit D attached hereto.
- M. REQUIRED CONTRACT TERMS: The terms and conditions contained in the draft agreement attached as Exhibit D or, in the sole discretion of the A&M System, terms and conditions substantially similar to those contained in the attached agreement, will constitute and govern any Agreement that results from this RFQ. If Respondent takes exception to any terms or conditions set forth in the attached agreement, Respondent will submit a list of the exceptions as part of its proposal. Respondent's exceptions will be reviewed by the A&M System and may result in disqualification of Respondent's proposal as non-responsive to this RFQ. If Respondent's exceptions do not result in disqualification of Respondent's proposal, then the A&M System may consider Respondent's exceptions when the A&M System evaluates the Respondent's proposal.



**EXHIBIT A  
EXECUTION OF OFFER  
RFQ01-FPC-26-269**

**In compliance with this RFQ, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted.**

**A.1 Respondent Affirmation**

NOTE TO RESPONDENTS: SUBMIT ENTIRE SECTION WITH RESPONSE.

This execution of offer must be completed, signed, and returned with the Respondent's Proposal. Failure to complete, sign and return this execution of offer with the Proposal may result in rejection of the Proposal.

Signing a false statement may void the submitted Proposal or any agreements or other contractual arrangements, which may result from the submission of Respondent's Proposal. A false certification shall be deemed a material breach of contract and, at the A&M System's option, may result in termination of any resulting contract or purchase order.

Addenda Acknowledgment:

Receipt is hereby acknowledged of the following addenda to this RFQ by entering yes or no in space provided and indicating date acquired. Enter "0" if none received.

No. 1 _____	Date _____	No. 3 _____	Date _____
No. 2 _____	Date _____	No. 4 _____	Date _____

**A.2 Signature**

By signing below, the Respondent hereby certifies as follows, and acknowledges that such certifications will be included in any resulting contract:

- (i) the Response and all statements and information prepared and submitted in response to this RFQ are current, complete, true and correct;
- (ii) it is not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount trip, favor or service to a public servant in connection with the submitted response or any subsequent proposal. Failure to sign below, or signing a false statement, may void the response or any resulting contracts at the A&M System' option, and the Respondent may be removed from all future proposal lists at this state agency;
- (iii) the individual signing this document and the documents made part of the RFQ is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract which may result from the submission of the Response;
- (iv) no relationship, whether as a relative, business associate, by capital funding agreement or by any other such kinship exists between Respondent and an employee of the A&M System;
- (v) Respondent has not been an employee of the A&M System within the immediate twelve (12) months prior to the RFQ response;
- (vi) no compensation has been received for participation in the preparation of this RFQ (ref. Section 2155.004 Texas Government Code);
- (vii) all services to be provided in response to this RFQ will meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health law (Public

- Law 91-596) and its regulations in effect as of the date of this solicitation;
- (viii) Respondent complies with all federal laws and regulations pertaining to Equal Employment Opportunities;
  - (ix) to the best of its knowledge, no member of the Board of Regents of The Texas A&M University System, or the Executive Officers of the Texas A&M University System or its member institutions or agencies, has a financial interest, directly or indirectly, in the Solution;
  - (x) each individual or business entity proposed by Respondent as a member of its team that will engage in the practice of engineering or architecture will be selected based on demonstrated competence and qualifications only;
  - (xi) if the Respondent is subject to the Texas franchise tax, it is not currently delinquent in the payment of any franchise tax due under Chapter 171, Texas Tax Code, or is exempt from the payment of such taxes. A false certification may result in the Respondent's disqualification;
  - (xii) under Section 231.006, Family Code, the Respondent or applicant certifies that the individual or business entity named in this RFQ, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that any resultant agreement may be terminated and payment may be withheld if this certification is inaccurate; and,
  - (xiii) under Section 2155.006, Government Code, the Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that any resultant agreement may be terminated and payment withheld if this certification is inaccurate.
  - (xiv) under Section 2155.0061, Texas Government Code, the Respondent certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
  - (xv) Respondent warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this RFQ and any contract which may result from the submission of the Response.

Respondent shall provide their Federal Employer Identification Number ("EIN"), full vendor name, address and contact information as requested in the spaces below. Failure to manually sign or with electronic signature (e.g., DocuSign or Adobe Sign) in the Authorized Signature line below will disqualify the proposal response. The person signing shall show title or authority to bind his/her firm into a contractual relationship.

Federal EIN/Taxpayer ID #: \_\_\_\_\_

Vendor/Company Name: \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

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

Title: \_\_\_\_\_

Street: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-mail: \_\_\_\_\_

\* By signing this Execution of Offer, Respondent certifies that if a Texas address is shown as the address of the respondent, respondent qualifies as a Texas Resident Bidder as defined in Texas Government Code, § 2252.001(4)

**EXHIBIT B**  
**NON-COLLUSION AFFIDAVIT**

The undersigned, duly authorized to represent the persons, companies and corporations joining and participating in the submission of the foregoing Qualifications (such persons, companies and corporations hereinafter being referred to as the "Respondent"), being duly sworn, on his or her oath, states that to the best of his or her belief and knowledge no person, company or corporation, nor any person duly representing the same joining and participating in the submission of the foregoing Qualifications, has directly or indirectly entered into any agreement or arrangement with any other Respondents, or with any official of A&M System or any employee thereof, or any person, company or corporation under contract with A&M System whereby the Respondent, in order to induce acceptance of the foregoing Qualifications by said A&M System, has paid or is to pay to any other Respondent or to any of the aforementioned persons anything of value whatever, and that the Respondent has not, directly or indirectly entered into any arrangement or agreement with any other Respondent or Respondents which tends to or does lessen or destroy free competition in the letting of the contract sought for by the foregoing Qualifications.

The Respondent hereby certifies that neither it, its officers, partners, owners, providers, representatives, employees and parties in interest, including the affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Respondent, potential Respondent, company or person, in connection with this solicitation, to submit a collusive or sham bid, to refrain from bidding, to manipulate or ascertain the price(s) of other Respondents or potential Respondents, or to obtain through any unlawful act an advantage over other Respondents or A&M System.

**CONFLICT OF INTEREST**

The undersigned Respondent and each person signing on behalf of the Respondent certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of A&M System, nor any employee, or person, whose salary is payable in whole or in part by A&M System, has a direct or indirect financial interest in the award of this RFQ, or in the services to which this RFQ relates, or in any of the profits, real or potential, thereof, except as noted otherwise herein.

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2026.

Notary Public in and for the County of \_\_\_\_\_, State of

\_\_\_\_\_. My commission expires: \_\_\_\_\_

**EXHIBIT C**  
**SERVICE LOCATION MATRIX**

Indicate interest and ability to provide services with “Yes” or “No” at each of the Member locations listed below. If your company has multiple locations, provide the office location that will service each of the Member locations.

<b>MEMBER LOCATIONS</b>	<b>INTEREST/AVAILABILITY</b>	<b>OFFICE LOCATION</b>
College Station/Bryan, Texas		
Prairie View, Texas		
Galveston, Texas		
Dallas/Ft. Worth, Texas		
Stephenville, Texas		
Commerce, Texas		
Texarkana, Texas		
Canyon, Texas		
Kingsville, Texas		
Corpus Christi, Texas		
Laredo, Texas		
San Antonio, Texas		
Killeen, Texas		
Houston, Texas		
McAllen, Texas		
Victoria, Texas		
Austin, Texas		

**EXHIBIT D – INSURANCE**

1. Respondent shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. General Liability, Auto Liability and Excess/Umbrella Liability insurance 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 current financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to A&M System. By requiring such minimum insurance, the A&M System shall not be deemed or construed to have assessed the risk that may be applicable to Respondent under this Agreement. Respondent shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Respondent 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 A&M System at least ten days before the effective date of the cancellation.

**A. Worker's Compensation**

Worker's compensation insurance with the following minimum limits of coverage:

Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident
	\$1,000,000 Disease/Employee
	\$1,000,000 Disease/Policy Limit

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

**B. Automobile Liability Insurance**

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

**C. Commercial General Liability Insurance**

Commercial general liability insurance with the following minimum limits of coverage:

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

The required commercial general liability policy must be issued on a form that insures [Vendor's] or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

**D. Excess/Umbrella Liability Insurance**

Respondent shall maintain excess/umbrella liability insurance providing coverage in excess of all insurance required under this Agreement. Such coverage shall apply on a follow-form basis, or at a minimum, provide coverage no less broad than the underlying primary policies, including coverage for additional insureds where required. The policy shall be written with limits sufficient

to ensure a combined total limit of not less than \$5,000,000 per occurrence and in the aggregate, as applicable, for the underlying policies.

**E. Professional Liability (Errors & Omissions) Insurance**

Insurance with limits of not less than \$2,000,000 each occurrence, \$4,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of Respondent and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Respondent agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least two (2) years after the expiration or cancellation of this Agreement.

2. Respondent shall deliver to A&M System the evidence of insurance on a Texas Department of Insurance approved certificate form, Acord form, letter of self-insurance or its equivalent verifying the existence and actual limits of all insurance prior to the execution and delivery of this Agreement and prior to the performance of any services and/or Services by Respondent under this Agreement. Respondent shall provide additional evidence of insurance on an approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.
3. Commercial General Liability and Auto Liability policies must be endorsed to name the Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and its member institutions, universities, and agencies as additional insureds up to the actual liability limits of the policies maintained by Respondent. The commercial general liability additional insured endorsements must include on-going and completed operations. Commercial general liability and business auto liability policies must be written on a primary and non-contributory basis. Copies of each endorsement must be submitted with the certificate of insurance upon request.
4. Respondent hereby waives any and all rights of subrogation against the Board of Regents, The Texas A&M University System and its member institutions, universities, and agencies. All insurance policies must be endorsed to provide a waiver of subrogation in favor of the Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and its member institutions, universities, and agencies. Vendor's waiver under this Section shall apply regardless of whether Vendor has obtained the required waiver of subrogation endorsement from its insurer.
5. Any insurance written on a claims-made basis must show a retroactive date prior to the execution date of this Agreement or the start date of services/work performed, whichever date is earlier. Insurance must be maintained and evidence of insurance must be provided for [at least five (5) years after completion of contract work]. If coverage is cancelled or non-renewed and not replaced with another claims-made policy form with the same retroactive, Respondent must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work. Respondent shall send written notice to Certificate Holder ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required hereunder.
6. Respondent shall pay any deductible or self-insured retention for any loss.
7. Certificates of insurance and additional insured endorsements as required by this Agreement must be submitted/mailed to the following Certificate Holder and/or A&M System contact:

The Texas A&M University System  
301 Tarrow St, 5th Floor  
College Station, TX 77845  
Email Address: [Soprocurement@tamus.edu](mailto:Soprocurement@tamus.edu)

8. The insurance coverage required by this Agreement must be kept in force until all services and/or Services have been fully performed and accepted by A&M System in writing.
9. A&M System reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.



**EXHIBIT E**  
**MASTER SERVICES AGREEMENT**

This Master Services Agreement ("Agreement") is entered into and effective \_\_\_\_\_ (the "Effective Date"), by and between The Texas A&M University System, an agency of the state of Texas (hereafter referred to as "A&M SYSTEM"), and \_\_\_\_\_, [Insert PROVIDER's complete legal name] a \_\_\_\_\_ [Insert type of entity, such as corporation, limited liability company, partnership, and state of incorporation; remove this reference if contracting with an individual] (hereafter referred to as "PROVIDER"). A&M SYSTEM and PROVIDER are sometimes hereafter referred to as "Party" individually or "Parties" collectively.

A&M SYSTEM and PROVIDER hereby agree as follows:

**1. SERVICES**

- A. This Agreement is not a contract to perform specific work but is intended to establish the terms and conditions under which the A&M SYSTEM and its member universities and agencies may contract with the PROVIDER for the services as set forth in Exhibit A of this Agreement ("Services") by executing an order form or purchase order (each an "Order Form") with PROVIDER. The reference herein to "Member" or "Members" shall refer to the A&M SYSTEM or its member entity executing an Order Form. The A&M SYSTEM makes no guarantee of execution of an Order Form.
- B. The Order Form shall incorporate the specific Services requested by a Member, the payment amount due to PROVIDER and the period of performance subject to the terms in this Agreement. The terms of this Agreement shall be incorporated into any Order Form executed by a Member and PROVIDER for the Services during the term of this Agreement and the Order Form shall reference this Agreement. Upon execution of such Order Form, such Member is only responsible for its own compliance with the terms and conditions of this Agreement.
- C. Notwithstanding any other provision in this Agreement, PROVIDER's performance of the Services will (1) conform to the specifications and requirements of Request for Qualifications No. REQ01 FPC-26-269 (the "RFQ"), which is incorporated by reference for all purposes, and (2) to the extent consistent with the RFQ, will conform with PROVIDER's proposal, dated \_\_\_\_\_ ("PROVIDER's Proposal") which was submitted by PROVIDER in response to the RFQ and is incorporated by reference for all purposes. To the extent that the RFQ or PROVIDER's Proposal conflict with the terms of this Agreement, the terms of this Agreement will control.

**2. PROVIDER OBLIGATIONS**

- A. PROVIDER will perform the Services in accordance with the standards of care, skill, and diligence expected of a qualified, competent and experienced professional in the provision of the type of services required under this Agreement.
- B. PROVIDER will perform the Services substantially in accordance with PROVIDER's documentation, including without limitation, any marketing materials, user guides, technical specifications, training materials, instructions, documented policies or other written materials regarding the Services that are posted, delivered or otherwise made available by PROVIDER to the Member.
- C. PROVIDER will obtain, maintain in effect, and pay the cost for all licenses, permits, or certifications that may be necessary for PROVIDER's performance of this Agreement.

- D. PROVIDER represents and warrants that there are no obligations, commitments, third party rights, or impediments of any kind that will limit or prevent PROVIDER's performance of the Services.

### 3. TERM AND TERMINATION

- A. **Term.** This Agreement will commence on the Effective Date and continues through August 31, 2029 (the "Term"), unless earlier terminated as provided herein; provided, however, that the terms of this Agreement shall remain applicable to any Order Form that was executed prior to the expiration or termination of this Agreement but whose period of performance extends beyond the expiration or termination of this Agreement. The Term of the Agreement may be extended for two (2) additional one (1) year periods upon mutual written agreement executed by the Parties; provided that the total term of the Agreement shall not exceed five (5) years from the Effective Date.
- B. **Termination with Cause.** In the event of a breach of a material term of this Agreement by a Party, the non-defaulting Party may terminate this Agreement upon fifteen (15) days' prior written notice to the other Party detailing the nature of the breach and the other Party fails to fully cure the breach within such fifteen (15) day period. Furthermore, A&M SYSTEM may immediately terminate this Agreement if (i) the PROVIDER's insurance coverage required under this Agreement is cancelled or non-renewed; or (ii) the PROVIDER declares bankruptcy, is placed into involuntary bankruptcy or receivership or becomes insolvent. In the event that A&M SYSTEM terminates this Agreement for cause, the Member shall receive, within thirty (30) days following the effective date of termination, a pro-rata refund of any fees prepaid by the Member that cover Services that have not been delivered by PROVIDER as of the date of such termination.
- C. **Termination without Cause.** A&M SYSTEM may terminate this Agreement at any time upon thirty (30) days' prior written notice to PROVIDER.
- D. **Termination of an Order Form.** The period of performance of any Order Form will be as provided in the Order Form. Either party to the Order Form may terminate such Order Form effective upon written notice to the other party if the other party materially breaches any term of this Agreement or the Order Form and fails to cure such breach within fifteen (15) days after receiving written notice of the breach. An Order Form may also be immediately terminated if (i) the PROVIDER's insurance coverage required under this Agreement is cancelled or non-renewed; or (ii) the PROVIDER declares bankruptcy, is placed into involuntary bankruptcy or receivership or becomes insolvent. In the event that the Member terminates the Order Form for cause, the Member shall receive, within thirty (30) days following the effective date of termination, a pro-rata refund of any fees prepaid by the Member that cover Services that have not been delivered by PROVIDER as of the date of such termination. Furthermore, the Member may terminate the Order Form at any time upon thirty (30) days prior notice to PROVIDER. The termination of any one Order Form will not affect any other Order Form or this Agreement.

### 4. PAYMENT TERMS

- A. The A&M SYSTEM shall not pay any costs or fees as a direct result of this Agreement. The Member identified in the Order Form will pay the amount due to PROVIDER under such Order Form. The fees paid by a Member to PROVIDER for the Services requested under the Order Form, shall be calculated based on the fee rate schedule attached as Exhibit B and made a part of this Agreement. The rate schedule may be renegotiated at the discretion of A&M SYSTEM upon renewal of this Agreement. Additional rates and fees may be negotiated on a Member specific Order Form, provided no less favorable than under this Agreement.

- B. PROVIDER shall invoice the Member for amounts due consistent with the payment schedule as negotiated under the Order Form. Each invoice must reference the Order Form and the Member's purchase order number (if applicable) and include a description of services provided along with documentation that Member may reasonably request to support the invoice amount. The Member will make payment on a properly prepared and submitted invoice in accordance with Chapter 2251, Texas Government Code (the "Texas Prompt Payment Act"), which shall govern remittance of payment and remedies for late payment and non-payment.
- C. For reasonable business-related travel, lodging and/or meal expenses validly incurred directly and solely in support of the Services and approved by the Member in advance, PROVIDER will be reimbursed by the Member according to the State of Texas rates, rules, and regulations (<https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>). When requesting such reimbursement, PROVIDER will submit to the Member receipts, invoices and other documentation as required by the Member. Under no circumstances will PROVIDER be reimbursed for alcohol purchases. State travel rates are subject to change without notice and will be adjusted accordingly. Mileage rates will be calculated from point-to-point (PROVIDER's place of business to job site) using the State of Texas mileage. Should the Agreement be renewed for an additional term, travel reimbursement amounts will be renegotiated at that time.
- D. All payments will be made by electronic direct deposit. PROVIDER is required to complete and submit to the Member a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at:  
<https://www.tamus.edu/business/budgets-and-accounting/accounting/general/>
- E. As an agency of the State of Texas, the A&M System and its Members are tax exempt. Tax exemption certification will be furnished to PROVIDER upon request.

## 5. OWNERSHIP OF CREATED WORKS

The Parties intend that all works prepared by PROVIDER under this Agreement and the Member's Order Form ("Deliverables") will be works made for hire and the copyrights and all other rights in the Deliverables will be the sole and exclusive property of the Member. If, for any reason, the Deliverables would not be works made for hire, then PROVIDER irrevocably assigns, transfers and conveys to the Member, for no additional consideration, all of PROVIDER's ownership, rights, title and interest in and to the Deliverables, including, without limitation, all copyrights, patents, trademarks, trade secrets and other intellectual property rights and all other rights that may hereafter be vested relating to the Deliverables under law. PROVIDER certifies that all Deliverables will be original, or that PROVIDER will have obtained all rights necessary for the ownership and unrestricted use of the Deliverables by the Member. PROVIDER shall secure for the Member all consents, releases, and contracts and perform other reasonable acts as the Member may deem necessary to secure and evidence the Member's rights in any Deliverable.

## 6. CONFIDENTIALITY

- A. The Parties anticipate that under this Agreement and the Member's Order Form it may be necessary for a Party (the "Disclosing Party") to disclose information of a confidential nature ("Confidential Information") to the other Party (the "Receiving Party"). The Disclosing Party shall clearly identify Confidential Information at the time of disclosure by (i) appropriate stamp or markings on the document exchanged, or (ii) written notice, with attached listings of all material, copies of all documents, and complete summaries of all oral disclosures (under prior assertion of the confidential nature of the same) to which each notice relates, delivered within thirty (30) days of the disclosure to the Receiving

Party. Confidential Information shall include all information, data or other content that a Member, its affiliates, and their employees, contractors, students, or end-users enter, submit or upload to Services or otherwise provide to PROVIDER through use of the Services under this Agreement and the Order Form (collectively, the "Customer Data").

- B. "Confidential Information" does not include information that: (i) is or becomes publicly known or available other than as a result of a breach of this Agreement by the Receiving Party; (ii) was already in the possession of the Receiving Party as the result of disclosure by an individual or entity that was not then obligated to keep that information confidential; (iii) the Disclosing Party had disclosed or discloses to an individual or entity without confidentiality restrictions; or (iv) the Receiving Party had developed or develops independently before or after the Disclosing Party discloses equivalent information to the Receiving Party; provided however, that the above exclusions do not apply to Customer Data that is personally identifiable information or other personal or private data that is protected under applicable laws or regulations.
- C. The Receiving Party shall handle Confidential Information with the same care that the Receiving Party uses to protect its own information of comparable sensitivity, but not less than reasonable care. For Customer Data, a reasonable standard of care includes at minimum the obligations set forth in Section 10.B, Access to Agency Data, below. The Receiving Party may use Confidential Information only for purposes of performing its obligations under this Agreement and the Order Form and may disclose Confidential Information only to the Receiving Party's employees, contractors, agents, and other representatives ("Representatives") having a need to know the Confidential Information to fulfill the Receiving Party's obligations under this Agreement and the Order Form; provided that they are subject to confidentiality obligations not less restrictive than those set forth herein, and the Receiving Party remains responsible for its Representatives' compliance with the obligations under this Section.
- D. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized disclosure, misappropriation, or misuse of Confidential Information and shall take prompt and effective steps to prevent a recurrence of such misappropriation or misuse.
- E. If the Receiving Party is legally required to disclose Confidential Information, the Receiving Party shall, to the extent allowed by law, promptly give the Disclosing Party written notice of the requirement so as to provide the Disclosing Party a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If the Receiving Party complies with the terms of this Section, disclosure of that portion of the Confidential Information, which the Receiving Party is legally required to disclose, will not constitute a breach of this Agreement or the Order Form.
- F. The Receiving Party shall, upon request of the Disclosing Party, promptly return or destroy all materials embodying Confidential Information other than materials in electronic backup systems or otherwise not reasonably capable of being readily located and segregated without undue burden or expense, except that the Receiving Party may securely retain one (1) copy in its files solely for record purposes; provided that any such Confidential Information shall remain subject to the confidentiality obligations set forth herein. The Receiving Party's obligations as to Confidential Information will survive the termination or expiration of this Agreement or an Order Form for a period of one (1) year.

## **7. CUSTOMER DATA PRIVACY**

- A. The Member shall retain all right, title, and interest in and to Customer Data. Furthermore, if the Services provided include content generated by artificial intelligence ("AI"), the Member shall retain all right, title, and interest in and to the AI generated outputs. Customer Data may include information relating to employees and students,

including, but not limited to personally identifiable information, social security numbers, credit card numbers, or data protected or made confidential or sensitive by applicable federal, state, and local laws, rules, and regulations.

- B. PROVIDER shall, within two (2) days of discovery, report to the applicable Member any use or disclosure of Customer Data not authorized by this Agreement or in writing by the applicable Member. PROVIDER's report must identify: (a) the nature of the unauthorized use or disclosure, (b) the Customer Data used or disclosed, (c) who made the unauthorized use or received the unauthorized disclosure (if known), (d) what PROVIDER has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action PROVIDER has taken or will take to prevent future similar unauthorized use or disclosure. PROVIDER shall provide such other information, including a written report, as reasonably requested by the applicable Member.
- C. Within thirty (30) days of the expiration or termination of this Agreement or an Order Form, PROVIDER, as directed by a Member, shall return in acceptable electronic format all Customer Data in its possession (or in the possession of any of its subcontractors or agents) to such Member or, at the Member's option, delete all such Customer Data, if return is not feasible. PROVIDER shall provide the applicable Member with at least ten (10) days' written notice of PROVIDER's intent to delete such Customer Data and shall confirm such deletion in writing.

## 8. COMPLIANCE WITH LAWS

- A. **General.** Each Party shall comply with all federal, state, and local laws, executive orders, rules, and regulations applicable to the performance of its obligations under this Agreement.

### [ALTERNATIVE 1: Include the following provision if contracting with a U.S. entity:]

- B. **Export Control.** Each Party shall comply with U.S. export control regulations. If either Party desires to disclose to the other Party any information, technology, or data that is identified on any U.S. export control list, the disclosing Party shall advise the other Party at or before the time of intended disclosure and may not provide export-controlled information to the other Party without the written consent of the other Party. PROVIDER certifies that none of its personnel participating in the activities under this Agreement is a "restricted party" as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.

### [ALTERNATIVE 2: Include the following provision if contracting with a foreign entity:]

- C. **Export Control.** A&M SYSTEM and the Members are subject to United States laws and regulations controlling the export of technical data, software, laboratory prototypes, and other commodities, and its obligations under this Agreement are contingent on compliance with applicable laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States government or written assurances by PROVIDER that PROVIDER will not export data or commodities to certain countries without advance approval of that agency. A&M SYSTEM neither represents that a license will not be required nor that, if required, it will be issued. PROVIDER shall comply with all applicable export laws and regulations and may not export or allow the export or re-export of commodities or technical data in violation of those laws or regulations. PROVIDER certifies that none of its personnel participating in the activities under this Agreement is a "restricted party" as listed on the Denied Persons List,

Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.

## **9. INDEMNIFICATION**

Subject to the statutory duties of the Texas Attorney General, PROVIDER shall indemnify, defend and hold harmless A&M SYSTEM, Members, and their regents, employees and agents (collectively, the "A&M System Indemnitees") from and against any third-party claims, demands, damages, liabilities, expense or loss asserted against A&M System Indemnitees (each, a "Claim") arising out of or related to (i) an allegation that any of the Services infringe upon, misappropriate, or otherwise violate the intellectual property rights of a third party; (ii) PROVIDER's breach of any certification, representation, or warranty contained in this Agreement; or (iii) any acts or omissions of PROVIDER or its employees or agents pertaining to the activities and obligations under this Agreement, except to the extent such Claim arises from an A&M System Indemnitee's gross negligence or willful misconduct.

## **10. INSURANCE**

PROVIDER shall obtain, and maintain, for the duration of this Agreement, the minimum insurance coverage set forth on Exhibit C, attached hereto.

## **11. CAMPUS SECURE AREAS; RESEARCH ACTIVITIES; CONFIDENTIALITY**

Only applicable to the extent A&M SYSTEM enters into an Order Form for the RELLIS Campus, the parties acknowledge that activities at the RELLIS Campus involve the conduct of research, which may be highly sensitive in nature. The parties agree that PROVIDER's access to the RELLIS Campus (including access by its employees, agents, and subcontractors) shall be restricted to the locations and purposes described herein, or otherwise authorized by A&M System. The parties agree that all research and testing information and activities ("Research Activities") conducted or accessed on the RELLIS Campus shall be considered Confidential Information (as defined herein) belonging to the A&M System or the individual researcher or licensee conducting the Research Activities. PROVIDER agrees that it (including its employees, agents, and subcontractors) shall comply with any security processes and procedures communicated to PROVIDER before or during PROVIDER's access to the RELLIS Campus, and shall not attempt to access the Research Activities at the RELLIS Campus. In the event that PROVIDER (including its employees, agents, and subcontractors) should view, receive, hear, observe, or access Research Activities of any entity at the RELLIS Campus (whether from air space, office, hangar, common area, electronically, or by any other means), PROVIDER (including its employees, agents, and subcontractors) shall treat all such information as Confidential Information and shall use reasonable care to protect the Confidential Information from disclosure and not disclose, copy, photograph, record, retain, use or discuss any such Confidential Information. For purposes of this section, Confidential Information means any information not publicly known or available, including, but not limited to, sensitive, proprietary or other non-public information, or trade secrets, written or oral, whether or not it is marked as such, that is disclosed or made available to the receiving party, directly or indirectly, through any means of communication or observation. PROVIDER is responsible for ensuring compliance of its employees, agents and subcontractors with this section.

## **12. MISCELLANEOUS**

A. **Authority to Contract.** Each Party represents and warrants that it has full right, power and authority to enter into and perform its obligations under this Agreement, and that the person signing this Agreement is duly authorized to enter into this Agreement on its behalf.

- B. **Entire Agreement.** This Agreement, exhibits hereto, and the Order Form, constitutes the entire and only agreement between the Parties relating to the subject matter hereof and supersedes any prior understanding, written or oral agreements between the Parties, or “side deals” which are not described in this Agreement. This Agreement may be amended only by a subsequent written agreement signed by authorized representatives of both Parties. The express terms hereof control in the event of a conflict with any other documents constituting part of this Agreement.
- C. **Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party’s reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).
- D. **Independent Contractor.** Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by PROVIDER’s Service to Members. Except as specifically required under the terms of this Agreement, PROVIDER (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of A&M SYSTEM or Members. As an independent contractor, PROVIDER is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers’ compensation insurance. PROVIDER and its employees shall observe and abide by all applicable policies, regulations, rules and procedures of Members and A&M SYSTEM, including those applicable to conduct on their premises.
- E. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of A&M SYSTEM. Any purported assignment in violation of this Section will be void.
- F. **Non-Waiver of Defaults.** The failure of either Party at any time to require performance by the other Party of any provision of this Agreement will in no way affect the right to require such performance at any time thereafter nor will the waiver by either Party of a breach of any provision be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.
- G. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed given: (i) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (ii) the next business day after it is sent by overnight carrier, (iii) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (iv) on the date of delivery if delivered personally. A&M SYSTEM and PROVIDER can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

A&M SYSTEM:

The Texas A&M University System

301 Tarrow St., Suite 273  
College Station, Texas 77840  
Attention: Jeff Zimmermann  
Phone: (979) 458-6410  
E-mail: jzimmermann@tamus.edu

PROVIDER: **[Insert PROVIDER's complete legal name]**  
**[Insert PROVIDER's address]**  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

- H. **Organization.** If PROVIDER is a business entity, PROVIDER warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of PROVIDER has been duly authorized to act for and bind PROVIDER. Upon A&M SYSTEM's request, PROVIDER shall promptly deliver to A&M SYSTEM (i) a certificate of good standing certified by the appropriate governmental officer in its jurisdiction of incorporation or organization; and (ii) a certificate of fact issued by the Texas Secretary of State.
- I. **Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.
- J. **Survival.** Any provision of this Agreement that may reasonably be interpreted as being intended by the Parties to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.
- K. **U.S. Currency.** All amounts payable hereunder shall be paid in United States dollars.
- L. **Use of Name.** Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading. The Parties will mutually agree in advance upon any public announcements, or communications to the media regarding this Agreement or the Services to be provided pursuant to this Agreement.

### 13. STATE AGENCY CLAUSES

- A. **Conflict of Interest.** PROVIDER certifies, to the best of their knowledge and belief, that no member of the A&M System's Board of Regents, nor any officer of A&M SYSTEM or Members, has a direct or indirect financial interest in PROVIDER or in the transaction that is the subject of the Agreement.



- B. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, Texas Family Code, PROVIDER certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- C. **Dispute Resolution.** To the extent that Chapter 2260, Texas Government Code is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by A&M SYSTEM, Members and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to the Contracts Officer of A&M SYSTEM or the applicable Member, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim. This provision and nothing in this Agreement waives A&M SYSTEM's or Member's sovereign immunity to suit or liability, and A&M SYSTEM and Members have not waived their right to seek redress in the courts.
- D. **Executive Order GA-43.** To the extent that PROVIDER is providing goods to a Member under this Agreement, PROVIDER represents and warrants that the goods are not produced in or exported from the Gaza Strip or from any organization or state actor with ties to Hamas.
- E. **Executive Order GA-48.** PROVIDER represents and warrants that PROVIDER is not and, if applicable, none of its holding companies or subsidiaries are (i) listed in Section 889 of the 2019 National Defense Authorization Act ("NDAA") regarding telecommunications and video surveillance; (ii) listed in Section 1260H of the 2021 NDAA regarding Chinese military companies in the US; (iii) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4 ("15 C.F.R. § 791.4 List"); or (iv) controlled by any governing or regulatory body located in a country on the 15 C.F.R. § 791.4 List. PROVIDER acknowledges that a false certification is a material breach of contract and is grounds for immediate termination of this Agreement with no further obligation on the part of Members or A&M System. If this Agreement is terminated due to a false certification, PROVIDER will immediately reimburse Members for all prepaid costs.
- F. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
- G. **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.
- H. **Subcontracting Plan.**

[ALTERNATIVE 1: Include the following provision if no subcontracting opportunities:]

PROVIDER has indicated it will not subcontract any of its duties or obligations under this Agreement. If PROVIDER will subcontract any of its duties and obligations under this Agreement, PROVIDER will be required to provide prior written notice to A&M System and submit a subcontracting plan, pursuant to the Veteran Heroes United in Business program (VetHUB or HUB), as required under Section 20.285 of the Texas Administrative Code.

**[ALTERNATIVE 2: Include the following provision if there are subcontracting opportunities:]**

Pursuant to the Veteran Heroes United in Business program (VetHUB or HUB), PROVIDER will use good faith efforts to subcontract work performed under this Agreement in accordance with the subcontracting plan attached hereto as Exhibit [X] ("HSP"). Except as specifically provided in the HSP, PROVIDER will not subcontract any of its duties or obligations under this Agreement, in whole or in part. Furthermore, PROVIDER will comply with all of its duties and obligations under Section 20.285 of the Texas Administrative Code.

- I. **Loss of Funding.** Performance by A&M SYSTEM and Members 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, A&M SYSTEM and Members will issue written notice to PROVIDER and A&M SYSTEM and Members may terminate or cancel this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of A&M SYSTEM and Members. In the event of a termination or cancellation under this Section, A&M SYSTEM and Members will not be liable to PROVIDER for any damages that are caused or associated with such termination or cancellation.
- J. **Non-Waiver of Privileges and Immunities.** A&M SYSTEM and Members are an agency of the state of Texas and under the Constitution and the laws of the state of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has authority as is granted to it under the Constitution and the laws of the state of Texas. PROVIDER expressly acknowledges that A&M SYSTEM and Members are an agency of the state of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by A&M SYSTEM and Members of their right to claim such exemptions, remedies, privileges, and immunities as may be provided by law, including the sovereign immunity of A&M SYSTEM and Members.
- K. **Not Eligible for Rehire.** PROVIDER is responsible for ensuring that its employees involved in any work being performed for A&M SYSTEM or Members under this Agreement have not been designated as "Not Eligible for Rehire" as defined in System policy 32.02, *Discipline and Dismissal of Employees*, Section 4 ("NEFR Employee"). In the event A&M SYSTEM or Member becomes aware that PROVIDER has a NEFR Employee involved in any work being performed under this Agreement, A&M SYSTEM or Member will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by A&M SYSTEM or Member.
- L. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- M. **Prior Employment.** PROVIDER acknowledges that Section 2252.901, Texas Government Code, prohibits A&M SYSTEM and Members from using state appropriated funds to enter

into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with individual who has been previously employed by A&M SYSTEM and Members during the twelve (12) month period immediately prior to the effective date of the Agreement. If PROVIDER is an individual, by signing this Agreement, PROVIDER represents and warrants that it is not a former or retired employee of A&M SYSTEM or Members that was employed by A&M SYSTEM or Members during the twelve (12) month period immediately prior to the effective date of the Agreement.

- N. **Prohibition on Contracts with Companies Boycotting Energy Companies.** To the extent that Chapter 2276, Texas Government Code, is applicable to this Agreement, PROVIDER certifies that (i) it does not boycott energy companies, and (ii) it will not boycott energy companies during the Term of this Agreement. PROVIDER acknowledges this Agreement may be terminated for cause and payment withheld if this certification is inaccurate.
- O. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Chapter 2271, Texas Government Code, is applicable to this Agreement, PROVIDER certifies that (i) it does not currently boycott Israel, and (ii) it will not boycott Israel during the Term of this Agreement. PROVIDER acknowledges this Agreement may be terminated for cause and payment withheld if this certification is inaccurate.
- P. **Prohibition on Contracts with Companies Discriminating Against Firearm Entities and Trade Associations.** To the extent that Chapter 2274, Texas Government Code, is applicable to this Agreement, PROVIDER certifies that (i) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (ii) it will not discriminate during the Term of this Agreement against a firearm entity or firearm trade association. PROVIDER acknowledges this Agreement may be terminated for cause and payment withheld if this certification is inaccurate.
- Q. **Prohibition on Contracts with Companies Engaging in Business with Certain Countries and Organizations.** PROVIDER certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, Texas Government Code. PROVIDER acknowledges this Agreement may be terminated for cause immediately if this certification is inaccurate.
- R. **Public Information.** PROVIDER acknowledges that A&M SYSTEM and Members are 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 A&M SYSTEM's or Member's written request, PROVIDER will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M SYSTEM or Members to A&M SYSTEM or Members in a non-proprietary format acceptable to A&M SYSTEM or Members that is accessible by the public. PROVIDER acknowledges that A&M SYSTEM and Members 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. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and PROVIDER agrees that this Agreement can be terminated if PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.
- S. **Record Retention.** To the extent that Section 552.372, Texas Government Code applies to this Agreement, PROVIDER must (i) preserve all "contracting information", as defined under Section 552.003(1-a), Texas Government Code, related to this Agreement for the duration of this Agreement as provided by the A&M System's records retention requirements; (ii) promptly provide to the A&M System any contracting information

related to this Agreement that is in the custody or possession of PROVIDER on request of the A&M System; and (iii) on completion of this Agreement, either (a) provide at no cost to the A&M System, all contracting information related to this Agreement that is in the custody or possession of PROVIDER, or (b) preserve the contracting information related to this Agreement for seven (7) years after the conclusion of this Agreement as provided by the A&M System's records retention requirements. Furthermore, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement, and PROVIDER agrees that this Agreement can be terminated if PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.

- T. **State Auditor's Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- U. **Venue.** Pursuant to Section 85.18(b), Texas Education Code, mandatory venue for all legal proceedings against A&M SYSTEM or Members is to be in the county in which the principal office of A&M SYSTEM's or Member's governing officer is located.
- V. **Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, Government Code, the PROVIDER certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated if this certification is inaccurate.

(SIGNATURES TO FOLLOW ON NEXT PAGE)

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

**The Texas A&M University System**

**[Insert PROVIDER's complete legal name]**

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A – Services

Exhibit B – Fee Rate Schedule

Exhibit C – Insurance

Exhibit D –Subcontracting Plan

DRAFT