

**AGREEMENT FOR SERVICES**  
(Agency Purchase Order Number \_\_\_\_\_)

This AGREEMENT (the Agreement) is for services rendered on or after September 1, 2016 (the Effective Date), between the Texas Board of Architectural Examiners (TBAE), with its principal place of business at 333 Guadalupe, Suite 2-350, Austin, Texas 78701, and Vivify Creative Communications, Inc. (Contractor), with its principal address at 6706 Deatonhill Drive, Suite B, Austin, Texas 78745.

**I. Definitions**

Date of Acceptance – the first business day following the expiration of thirty (30) days after TBAE receives the last Deliverable described in Section II below entitled “Scope of the Agreement;” if TBAE files a written objection to any Deliverable prior to the Date of Acceptance, the Date of Acceptance will be deemed to be the first business day following the date on which all objections have been cured. If TBAE files neither a written objection nor a written acceptance within the applicable period, the Deliverables will be deemed to have been formally accepted thirty (30) days after TBAE receives them.

Deliverables – all services to be performed and products to be provided as described in Section II below entitled “Scope of the Agreement.”

**II. Scope of the Agreement**

A. This Agreement is for the purpose of providing graphic design services. Services to be provided include the preparation of services described in the Project Estimate attached hereto.

B. Any terms and conditions attached by Contractor to an offer must be clearly specified in writing and must be agreed to in writing by TBAE prior to the rendering of services in order for such terms and conditions to be binding upon TBAE.

**III. Term of the Agreement**

This Agreement shall become effective on September 1, 2016, and shall continue thereafter until August 31, 2017; however, the Agreement may be renewed upon Contractor’s and TBAE’s written agreement. Expiration or termination shall not extinguish either party’s right to enforce this Agreement with respect to any breach of a warranty or any default or defect in performance that has not been cured.

**IV. Consideration**

Contractor agrees to provide the goods and/or services specified in Section II above entitled “Scope of the Agreement” in exchange for fees outlined in the Statement of Services. The total

amount of all payments made by TBAE pursuant to this Agreement shall not exceed \$2,550.00 per calendar year.

## **V. Credentials**

Contractor represents and warrants to TBAE that it has the ability to provide all of the goods and services associated with this Agreement.

## **VI. Contractor's Status**

The engagement relationship established by this Agreement is solely and entirely between the Board and the Contractor. The Contractor is an independent contractor, not an employee or agent of the Board or the State of Texas. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, subcontractors, and representatives in the performance of this Agreement.

The Contractor agrees and acknowledges that during the existence of this Agreement, the Contractor shall be entirely responsible for the liability and payment for the Contractor's employees or assistants of all taxes of whatever kind, arising out of the performances in this Agreement. Other than the payments described in this Agreement, the Contractor agrees and acknowledges that the Contractor and the Contractor's employees and assistants shall not be entitled to any state benefit on account of the services provided hereunder. **THE BOARD SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION, OR ANY BENEFIT DUE TO A STATE EMPLOYEE.** If the Board or the State of Texas shall nonetheless become liable for the payment of taxes, unemployment insurance premiums, or workers compensation benefits owed by the Contractor or any of its members, shareholders, or employees as a result of performance by the Contractor of its obligations under this Agreement, the Contractor shall promptly pay or reimburse the Board or the State of Texas for such liability.

The Contractor agrees that any person employed or engaged by the Contractor and who assists in performing the services agreed to herein shall not be considered employees or agents of the Board or the State of Texas. The Contractor shall be responsible for any payments and other claims due such persons for work performed under this Agreement. Further, the Contractor agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The Board shall not be liable to the Contractor, its employees, agents, or others for the provision of unemployment insurance and/or workers' compensation.

## **VII. Warranties**

A. Contractor represents and warrants to TBAE that: (1) Contractor has the power and authority to enter into and perform this Agreement; (2) this Agreement, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) all work performed under this Agreement shall be performed in a good and workmanlike manner and

in accordance with the highest industry standards; and (4) Contractor shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the work if required.

B. Contractor warrants that the Deliverables will meet or exceed all specifications identified in this Agreement.

C. Contractor represents and warrants that in the provision of services it will comply with all state and federal laws, rules, and regulations prohibiting discrimination in the provision of services based on race, color, religion, gender, disability, or national origin. Contractor represents and warrants that it will comply with all federal statutes, rules, and regulations that are applicable, including but not limited to export controls on encryption products.

D. Contractor shall indemnify and hold harmless the State of Texas from claims and liabilities resulting from the negligent or any other acts or omissions of Contractor, or any other subcontractors, or persons employed or otherwise engaged by Contractor.

E. All of the warranties in Section VII shall survive termination or expiration of the Agreement.

### **VIII. Limitation of Liability**

A. Neither party will be liable to the other for any consequential or indirect damages.

B. Notwithstanding any other provision of this Agreement, the cumulative liability of TBAE and Contractor, regardless of the form of action, for all claims whatsoever related to this Agreement, including but not limited to any cause of action sounding in contract, tort, or strict liability, shall not exceed the total actual damages sustained.

### **IX. Confidentiality**

All information gathered, produced, derived, obtained, analyzed, or controlled by Contractor in connection with this Agreement shall not be released or disclosed by Contractor unless TBAE has given its express prior written consent to disclosure, which consent must specifically identify the information to be disclosed by Contractor and the nature of the disclosure for which consent is given.

### **X. Subcontractors**

Contractor must receive prior written consent from TBAE before subcontracting any portion of this Agreement. Contractor is responsible for the performance of all subcontractors.

### **XI. Records Maintenance and Access**

Contractor shall maintain all fiscal records directly related to this Agreement in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records which are directly pertinent to this Agreement in such a manner as to clearly document

Contractor's performance. Contractor acknowledges and agrees that TBAE shall have access to such fiscal records and other books, documents, papers, plans, and writings of agreement that are directly pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such records, books, documents, papers, plans, and writings during the time that Contractor is performing services under this Agreement. When Contractor has completed all services to be performed under this Agreement, Contractor shall deliver all such records, books, documents, papers, plans, and writings to TBAE.

## **XII. Time is of the Essence**

Contractor agrees that time is of the essence under this Agreement. If delay is foreseen, Contractor shall give written notice to TBAE. TBAE may extend delivery date for good cause shown. Contractor must keep TBAE advised at all times of the status of any order. Default in promised delivery without written notice and approval from TBAE authorizes TBAE to purchase services elsewhere and charge Contractor for the full increase in cost and handling, if any.

## **XIII. Notice**

Notices will be effective when delivered in writing to the following persons shown at the addresses below. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Contractor and TBAE must give notice within five (5) days if the representative to receive such notice is changed.

If to Contractor:                      Vivify Creative Communications, Inc.  
6706 Deatonhill Drive, Suite B  
Austin, TX 78745

If to TBAE:                                Julie Hildebrand, Executive Director  
Texas Board of Architectural Examiners  
333 Guadalupe, Suite 2-350  
Austin, Texas 78701

With required copy to:                Communications Manager  
Texas Board of Architectural Examiners  
333 Guadalupe, Suite 2-350  
Austin, Texas 78701

## **XIV. Termination of the Agreement**

### **Parties' Right to Terminate for Convenience:**

This Agreement may be terminated at any time by mutual written consent of the parties.

### **TBAE's Right to Terminate for Convenience:**

TBAE may, at its sole discretion, terminate this Agreement, in whole or in part, upon thirty (30) days' prior written notice to Contractor.

**TBAE's Right to Terminate for Cause:**

TBAE may terminate this Agreement, in whole or in part, immediately upon notice to Contractor, or at such later date as TBAE may establish in such notice, upon the occurrence of any of the following events:

- A. TBAE fails to receive funding or appropriations, limitations, or other expenditure authority at levels sufficient to pay for Contractor's work;
- B. Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or TBAE is prohibited from paying for such work from the planned funding source;
- C. Contractor no longer holds any license or certificate that is required to perform the work; or
- D. Contractor commits any material breach or default of any covenant, warranty, obligation, or agreement under this Agreement; fails to perform the work under this Agreement within the time specified herein or any extension thereof; or so fails to pursue the work as to endanger Contractor's performance under this Agreement in accordance with its terms and such breach, default, or failure is not cured within thirty (30) business days after delivery of TBAE's notice, or such longer period as TBAE may specify in such notice.

**Contractor's Right to Terminate for Cause:**

Contractor may terminate this Agreement upon thirty (30) days' notice to TBAE if Contractor has properly completed all work for which TBAE has been properly invoiced and Contractor has not been paid pursuant to the terms of the Agreement for at least thirty (30) days after TBAE received notice.

**XV. Force Majeure**

Neither TBAE nor Contractor shall be held responsible for delay or default caused by fire, riots, acts of God, or war where such cause was beyond the reasonable control of TBAE or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligation under this Agreement.

**XVI. Amendments to the Agreement**

Any amendment to this Agreement must be in writing and executed by the duly authorized representatives of TBAE and Contractor. Neither TBAE nor Contractor will be bound by any oral statement or representation contrary to the written provisions of this Agreement. No substitutions or cancellations are permissible unless authorized in writing by TBAE.

## **XVII. Billing and Payment**

Contractor shall invoice TBAE for all Deliverables. TBAE shall pay Contractor within thirty (30) days of receipt of an invoice for a Deliverable which is received after the Date of Acceptance. All payments shall be due and payable to Contractor at the address specified above. Subject to the limitations of the terms and conditions of the Agreement, all payments shall be made in accordance with the Texas Prompt Payment Act.

## **XVIII. Governing Law**

TBAE and Contractor agree that the terms and conditions of this Agreement will be governed by the laws of the State of Texas. Venue of any suit involving this Agreement or its terms is fixed in any court of competent jurisdiction in Travis County, Texas.

## **XIX. Dispute Resolution**

The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used by TBAE and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

- A. Contractor's claims for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to Julie Hildebrand, Executive Director of TBAE. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of TBAE and Contractor otherwise entitled to notice under this Agreement. Compliance by Contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.
- B. The contested case process provided in Chapter 2260, subchapter C, of the Government Code is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of this Agreement by TBAE if the parties are unable to resolve their disputes under subparagraph A of this paragraph.
- C. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practice and Remedies Code. Neither the execution of this Agreement by TBAE nor any other conduct of any representative of TBAE relating to the Agreement shall be considered a waiver of sovereign immunity to suit.
- D. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance of Contractor, in whole or in part.

E. Notwithstanding the foregoing, Contractor does not waive its rights under Chapter 2260 of the Government Code, as amended, and in the event of a conflict between the above provisions and Chapter 2260, the latter shall control.

## **XX. Audit of Agreement**

Contractor understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

## **XXI. Assignment**

Contractor may not assign any right or duty under this Agreement.

## **XXII. Contractor Certifications**

A. **Delinquent Child Support Obligations.** Under Section 231.006 of the Texas Family Code, the Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

B. **Prohibited Bids and Agreements.** Under Section 2155.004 of the Texas Government Code (relating to prohibited bids and agreements), the Contractor, by signing this Agreement, certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

C. **Buy Texas.** With respect to all services, if any, purchased pursuant to this Agreement, the Contractor represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials.

D. **Gift to Public Servant.** The Contractor warrants that it has not given, nor does it intend 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 award of this Agreement.

E. **Corporate Franchise Tax.** By signing this Agreement, the Contractor certifies that its Texas franchise tax payments are current, or that it is exempt from, or not subject to, such tax.

F. Debt to State. The Contractor acknowledges and agrees that, to the extent the Contractor owes any debt or delinquent taxes to the State of Texas, any payments the Contractor are owed under this Agreement may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes the Contractor owes the State of Texas until the debt or delinquent taxes are paid in full.

G. Convictions or Other Wrongdoing Related to Disaster Relief. Under Sections 2155.006 and 2261.053, Government Code, the Contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

**THIS AGREEMENT IS FULL AND COMPLETE ON ITS FACE AND HAS BEEN READ BY ALL PARTIES. NO TERMS OR CONDITIONS EXIST OUTSIDE THOSE ACKNOWLEDGED AND ACCEPTED HEREIN BY THE PARTIES WHOSE SIGNATURES APPEAR BELOW.**

**VIVIFY CREATIVE  
COMMUNICATIONS, INC.**

**TEXAS BOARD OF  
ARCHITECTURAL EXAMINERS**

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

*Kris Krieg*  
KRIS KRIEG  
Principal

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

*9/14/2016*

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

*Julie Hildebrand*  
JULIE HILDEBRAND  
Executive Director

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

*8/25/16*