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AMENDMENT NO. 2
TO THE
PLUMBING SERVICES
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
TD INDUSTRIES, INC.

THIS AMENDMENT NO 2 is entered into by and between the Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 and TD Industries, Inc. located at 2701 Gattis School Road, Suite A-101, Round Rock, Texas 78664 (hereinafter referred to as "Contractor") (hereinafter collectively referred to as the "Parties") to amend the original Contract for plumbing services, as amended, (hereinafter referred to as the "Contract").

WHEREAS, on August 22, 2017 the Parties entered into that one certain *Contract for Plumbing Services between the Texas Facilities Commission and TD Industries, Inc.*, TFC Contract No. 18-064-000, for an initial period commencing September 1, 2017 and terminating on August 31, 2019; and

WHEREAS, the Parties subsequently entered into Amendment No. 1 for the purpose of making an administrative change to, and to include a statutorily-required provision in, the Contract; and

WHEREAS, subject to Contract Article II, Term, Section 2.1, Contract Award, and Contract Article X, Section 10.21, Entire Contract and Modification as that Section is re-numbered, below, the Parties now desire to exercise the option to extend the Term for the period September 1, 2019 through August 31, 2021, and to provide funding for services to be performed during that period; and

WHEREAS, on June 20, 2019, the TFC Commission approved such extension and funding; and

WHEREAS, TFC has determined to modify the Contract to include additional provisions, terms and conditions that have been adopted subsequent to the execution of the Contract and to its Amendment No. 1 in order to reflect the will of the Texas Legislature or to comply with action(s) or requirement(s) of the State Auditor's Office, the Office of the Attorney General, the Comptroller of Public Accounts, and/or any other authorizing entity of this state;

NOW, THEREFORE, the Parties agree to amend the Contract as follows:

1. The Parties agree to modify ARTICLE II – TERM, Section 2.1, Contract Award, by deleting paragraph 2.1(a) in its entirety and replacing it with paragraph 2.1(a) as follows:

> "2.1. **CONTRACT AWARD.** (a) This Contract shall be effective as of September 1, 2017 and shall have an initial Contract term of September 1, 2017 through August 31, 2019. By executing this Amendment No. 2, the Parties exercise their option to

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renew the Contract for the term beginning September 1, 2019 and ending on August 31, 2021 (hereinafter referred to as the "Final Renewal Period"). No further renewal option is authorized. This renewal will be governed by the same provisions, terms and conditions as the Contract, as amended, and with any additional provisions, terms and conditions included in this Amendment No. 2."

2. The Parties agree to modify ARTICLE II – TERM, Section 2.1, Contract Award, by adding Subsections (c), and (d), which shall read in their entirety, as follows:

"(c) Rights Upon Termination or Expiration of Contract. In the event that the Contract is terminated for any reason, or upon its expiration, TFC shall retain ownership of all associated work products and documentation obtained from the Contractor under this Contract.

(d) No Liability Upon Termination. If this Contract is terminated for any reason, TFC and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260."

3. The Parties agree to modify ARTICLE III – CONSIDERATION, Section 3.1, Contract Limit and Fees and Expenses, by deleting Section 3.1 in its entirety and replacing it Section 3.1, as follows:

"3.1. **CONTRACT LIMIT AND FEES AND EXPENSES.** (a) During the initial period of the Contract commencing September 1, 2017 and ending August 31, 2019, the total amount of fees to be paid under this Contract shall not exceed the sum of Eight Hundred Thousand and No/100 Dollars ($800,000.00). Pricing fees shall be invoiced in accordance with Exhibit A – Compensation and Fees, as incorporated. Any changes to the not-to-exceed amount of this Contract or to pricing fees set forth in Exhibit A - Compensation and Fees shall be submitted to TFC for review and shall be approved by an amendment to this Contract. Any unobligated, unexpended balance of funding for the initial period of the Contract shall expire Saturday, August 31, 2019 at 11:59:59 PM.

(b) During the Final Renewal Period as defined in Section 2.1, above, the total amount of fees and expenses to be paid under this Contract shall not exceed the sum of Eight Hundred Thousand and No/100 Dollars ($800,000.00). Pricing fees shall be invoiced in accordance with Exhibit A – Compensation and Fees, as incorporated. Any changes to the not-to-exceed amount of this Contract or to pricing fees set forth in Exhibit A - Compensation and Fees shall be submitted to TFC for review and shall be approved by an amendment to this Contract.

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(c) If, at any time during the term of this Contract, Contractor reduces the comparable price of any article or service covered by this Contract to customers other than TFC, the prices charged to TFC for such articles or services shall also be reduced proportionately. Such reduction shall be effective at the same time and in the same manner as the reduction in price to customers other than TFC. In addition to invoicing at the reduced prices, Contractor shall furnish promptly to TFC complete information regarding the reduction."

4. The Parties agree to modify ARTICLE VIII–INSURANCE, INDEMNIFICATION AND LEGAL OBLIGATIONS, Section 8.2, Insurance, paragraph 8.2(a) by deleting paragraph 8.2(a) in its entirety and replacing it with paragraph 8.2(a), as follows:

"8.2(a) Workers' Compensation and Employers' Liability coverage with minimum policy limits for employers' liability of $100,000.00 bodily injury per accident, $500,000.00 bodily injury disease policy limit and $100,000.00 per disease, per employee. Workers' compensation insurance coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(46). Pursuant to Texas Labor Code Section 406.096, certification in writing from Contractor and Contractor's subcontractors shall be provided to TFC upon request and without expense."

5. The Parties agree to modify ARTICLE IX – CONTRACTOR GENERAL AFFIRMATIONS, by deleting Section 9.14, Prohibition Against Boycotting Israel, and replacing it with Section 9.14, Entities that Boycott Israel, as follows:

"9.14. **ENTITIES THAT BOYCOTT ISRAEL.** Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of this Contract. Contractor shall state any facts that make it exempts from the boycott certification."

6. The Parties agree to further modify ARTICLE IX – CONTRACTOR GENERAL AFFIRMATIONS, by adding Sections 9.16 through and including 9.18, which shall read in their entirety as follows:

"9.16. **CERTIFICATION CONCERNING RESTRICTED EMPLOYMENT FOR FORMER STATE OFFICERS OR EMPLOYEES UNDER GOVERNMENT CODE § 572.069.** Contractor certifies that it has not employed and will not employ a former TFC or state officer who participated in a procurement or contract negotiation for TFC involving Contractor within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose service or employment ceased on or after September 1, 2015.

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9.17. **EXCLUDED PARTIES.** Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

9.18. **SUSPENSION AND DEBARMENT.** Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration."

7. The Parties agree to modify ARTICLE X – MISCELLANEOUS PROVISIONS, Section 10.2, Historically Underutilized Businesses (HUB's"), by adding Paragraph 10.2(a), Requirement to Utilize HUB Compliance Reporting System, as follows:

"10.2(a) Requirement to Utilize HUB Compliance Reporting System. Pursuant to Texas Administrative Code, Title 34 §§ 20.85(f)(l)(2) and 20.287(b), TFC administers monthly HUB Subcontracting Plan ("HSP") to include the Progressive Assessment Report ("PAR") compliance monitoring through a HUB Compliance Reporting System known as B2G. Contractor and Contractor's Subcontractors must submit required PAR information into the B2G system as a condition of payment. Any delay in the timely submission of PAR information into the B2G system will be treated as a deficiency and the payment request will be subject to suspension until such deficiency has been resolved."

8. The Parties agree to further modify ARTICLE X – MISCELLANEOUS PROVISIONS, by re-numbering Section 10.21, **ENTIRE CONTRACT AND MODIFICATION** as Section 10.23, and by inserting Sections 10.21 and 10.22, so that the inserted Sections and the re-numbered Section 10.23 read in their entirety, as follows:

"10.21. **ABANDONMENT AND DEFAULT.** If Contractor defaults on this Contract, TFC reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible respondent. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work.

10.22. **ANTITRUST AND ASSIGNMENT OF CLAIMS.** Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (i) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (ii) communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract. Contractor assigns to the State of Texas all of Contractor's rights, title, and interest in and to all claims and causes of action Contractor may have under the antitrust laws of Texas or the United States for overcharges associated with the

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Contract.

10.23. **ENTIRE CONTRACT AND MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistently with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension, or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto."

Except as expressly amended above, all provisions, terms and conditions of the Contract, as amended, remain in full force and effect.

In Witness Whereof, the parties hereto have made and executed this Amendment No. 2 to the Contract to be effective as of September 1, 2019.

TEXAS FACILITIES COMMISSION

DocuSigned by:
By: MIKE NOVAK, TFC EXECUTIVE DIRECTOR
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Mike Novak

Executive Director

Date of Execution: 07/08/2019 | 11:53 AM CDT

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DED WJ

TD INDUSTRIES, INC.

DocuSigned by:
By: Nicolas Sfeir
F0906EA817A9457...

Nicholas Sfeir

Vice President

Date of Execution: 07/08/2019 | 6:38 AM PDT