

**CONTRACT FOR
PARKING SERVICES
REVENUE SHARING MODEL
BETWEEN
THE TEXAS FACILITIES COMMISSION AND
HBA PARKING SYSTEM, INC.**

The Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 and HBA Parking System, Inc.(hereinafter referred to as "Contractor"), located at 807 Brazos Street, Suite 314, Austin, Texas 78701 enter into the following contract for parking services at the GJ Sutton State Office Complex, located at 321 Center Street, San Antonio, Texas (hereinafter referred to as the "Contract") pursuant to Tex. Gov't Code Ann. Ch. 2165 (West 2016).

I. STATEMENT OF WORK.

1.01 **SERVICE REQUIREMENTS.** (a.) Contractor shall provide parking and special events management services at the GJ Sutton State Office Complex Parking Lot (hereinafter referred to as "Facility") as further depicted in Exhibit A - GJ Sutton State Office Complex Plan, attached hereto and incorporated herein for all purposes. Contractor understands and agrees that all services performed pursuant to this Contract shall be in compliance with Exhibit B - TFC's Commercial Parking and Special Events Policies (hereinafter referred to as "CPSE Policies") and Exhibit C - TFC's Parking Contractor Payment Processing Procedures (hereinafter referred to as "Contractor Payment Processing Procedures"), attached hereto and incorporated herein for all purposes. Any deviation by Contractor from fully complying with all CPSE Policies and all Contractor Payment Processing Procedures is prohibited, except in the event that Contractor has sought and obtained TFC's prior written agreement to waive the application of CPSE Policies, and/or Contractor Payment Processing Procedures, as applicable.

(b.) The amounts that Contractor is permitted to charge for parking at the Facility pursuant to this Contract for each of the categories of events are set forth in Exhibit D - Limitations on Amounts Chargeable for Parking, attached hereto and incorporated herein for all purposes.

1.2. **PARKING FEE COLLECTION SYSTEM.** (a.) Contractor shall provide and utilize an integrated parking management system which allows for the payment of parking with cash or through electronic means including but not limited to: credit cards, debit cards and smart phones. The integrated parking system shall be secure and able to provide detailed reports of all transactions for invoicing and/or auditing purposes that include, but are not limited to, the following:

- (i.) tracking the number of paying customers per event; and,
- (ii.) tracking the number of State employees, per event, that were authorized to park free of charge.

(b.) TFC retains the right to require that Contractor make changes to its integrated parking management system that are necessary or advisable to assist in improving the security and integrity of the system.

1.3. **EQUIPMENT AND SUPPLIES.** Contractor shall provide equipment, operating supplies and other materials, as needed, for the operation of parking management and maintenance of the Facility.

(a.) Prior to bringing any equipment or supplies onto the Facility, Contractor shall obtain written approval from TFC.

(b.) Contractor shall provide professional signs to provide the following information: (i.) parking rates; (ii.) open or full status; (iii.) the TFC website, <http://www.tfc.state.tx.us/>, to which customer complaints may be submitted; and, (iv.) other operational information as may be required. All signs shall be clearly posted at each entrance and/or exit. Prior to Contractor's use of any signage, Contractor shall submit to TFC a photo of each proposed sign and receive TFC's written approval prior to use.

(c.) Contractor shall remove all temporary signs and barricades that are blocking entrances and/or exits of the Facility at the end of each event. With prior approval by TFC, Contractor may store the items in non-parking areas of the Facility to be removed at a later time.

(d.) Prior to making any improvements, installing any semi-permanent equipment or erecting any temporary structures at the Facility, Contractor must obtain written approval from TFC. Upon expiration of the Contract, Contractor shall remove any improvements or temporary structures, unless otherwise directed and amended by TFC. Contractor shall be responsible, at no cost to TFC, for repairing any damages to the Facility caused by the installation and removal of such improvements or temporary structures.

(e.) TFC shall not be held responsible for any loss or damage to Contractor's equipment or supplies.

(f.) Without limitation, Contractor is responsible for all costs associated with the installation, operation, maintenance and removal of all equipment utilized in the performance of this Contract.

1.4. **SPECIAL MANAGEMENT AND SERVICES AT UNIVERSITY OF TEXAS SAN ANTONIO FOOTBALL TAILGATING EVENTS.** Contractor shall be required to provide additional staff and perform specialized duties at scheduled University of Texas San Antonio (hereinafter referred to as "UTSA") tailgating events held at or nearby the Facility. In performing its duties, Contractor shall ensure that its plans and actions are communicated timely to TFC and carried out in coordination with TFC's performance of its duties related to tailgating events.

(a.) On the day of a UTSA home football game, Contractor shall provide permits at the Facility for available parking spaces. Contractor shall sell those available spaces on a first come–first served basis. Contractor shall communicate to all permit purchasers that their permits must be prominently displayed within their vehicle at all times while the vehicle is at the Facility. Contractor shall monitor the Facility periodically, but no less frequently than hourly, during the day of a UTSA game, to identify any vacant unreserved spaces available for purchase.

(b.) On the day of the UTSA home football game, Contractor shall provide adequate staff to man the entrances of the Facility in order to begin selling spaces and admitting vehicles at 7:00 am. The Contractor’s personnel shall remain at the entrances of the Facility to sell parking permits. If a Facility is sold out, Contractor shall secure the Facility by placing signs to indicate the Facility is full and blocking off the entrances and exits. Contractor’s personnel shall also ensure that vehicles and tailgaters at the Facility have permits and that no vehicles or tailgaters gain access without a permit

(c.) Contractor shall be responsible for the provision of garbage dumpsters for all UTSA tailgating events. TFC shall designate the size, number, location, delivery and pick-up times for each dumpster.

1.5. **MAINTENANCE.** Contractor shall clean and remove garbage at the Facility used during each tailgating or other special event. Cleaning shall include the removal of all types of debris, including human waste, regardless of size or composition. Contractor shall utilize manual and/or mechanical scrubbing, power washing or other methods and tools to sanitize the Facility in order to remove debris.

(a.) Cleanup shall be completed no later than 6:00 a.m. after each special event. Cleanup for UTSA football tailgating events shall commence no later than noon on the day following the game and shall be complete no later than 6:00 a.m. of the following day.

(b.) At the completion of each event, Contractor shall walk and clean the Facility in its entirety, including parking areas, stairways, sidewalks and grounds.

(c.) Contractor shall remove and dispose of the garbage from each garbage container in each Facility and insert a clean garbage container liner.

(d.) Contractor’s personnel performing maintenance duties shall utilize personal protective equipment appropriate for each task performed.

(e.) Contractor agrees to maintain the Facility and any other improvements thereon in as good a condition in which they were delivered, allowing for reasonable wear and tear. Contractor shall immediately inform TFC of any defects in conditions or operation of the Facility. Any malfunction or damage requiring emergency action shall be reported immediately to TFC’s 24 hour Operations Hotline.

(f.) Contractor shall immediately deliver to the Contract Administrator, as defined in Section 1.07 of this Contract, any items of value that are found in or around the Facility.

1.6. **REPORTING.** Contractor shall collect, track and submit information to TFC as more fully described below. Contractor reports and other submissions by Contractor to TFC are to be transmitted to TFC via email. TFC may, in its sole discretion, direct Contractor to provide a hard copy of any submission in addition to the submitted electronic copy. TFC reserves the right to add, delete or change the reporting requirements listed below.

(a.) **Weekly Revenue Reports.** Contractor shall compile a “Weekly Revenue Report” that shall be submitted electronically to TFC on a weekly basis. The Weekly Revenue Report is due no later than 5:00 pm on Tuesday of every week. For the purpose of compiling these reports, a week shall end on Sunday at midnight. The Weekly Revenue Reports shall be formatted in Excel and shall include, but not be limited to, the following:

- (i.) Facility name and address;
- (ii.) day of the week;
- (iii.) number of vehicles parked at the Facility; and,
- (iv.) gross revenue collected.

(b.) **Contractor Personnel Report.** Contractor shall maintain data on its personnel and submit a “Contractor Personnel Report” to TFC every three (3) months, beginning with the first full three (3) month period following the execution of this Contract. The report shall be submitted to TFC on or before the tenth (10th) calendar day of the first month following the three month period being reported. TFC may, in its sole discretion, direct that Contractor provide a Contractor Personnel Report to TFC on a more or less frequent basis than quarterly, and/or on a one-time basis, if TFC believes such information to be of assistance in maintaining the integrity of the State’s commercial parking operations. The report shall include, but not be limited to, the following:

- (i.) names of each employee who worked for Contractor at TFC Facilities;
- (ii.) employee’s current active or inactive work status;
- (iii.) employee’s date of hire and/or termination;
- (iv.) employee’s driver’s license number; and,
- (v.) date the employee cleared TFC’s criminal background check, as described in Section 4.02 below.

1.7. **CONTRACT ADMINISTRATOR.** (a.) TFC shall designate a “Contract Administrator” for this Contract who will serve as the point of contact between TFC and Contractor. The instructions of the Contract Administrator and/or the Contract Administrator’s designated representative (hereinafter collectively referred to as “Contract

Administrator”) are to be strictly and promptly followed by Contractor at all times. The Contract Administrator is to have free access to Contractor’s supplies, equipment, and work product at all times for inspection and audit. Contractor is to afford the Contract Administrator all necessary assistance during those inspections and/or audits. The Contract Administrator will decide any and all questions that may arise as to the quality and acceptability of work performed, and as to the compliance of Contractor’s performance with the terms of this Contract, TFC’s CPSE Policies and the Contractor Payment Processing Procedures. Failure of the Contract Administrator during the progress of the Contract to: (i.) discover or reject unacceptable work; (ii.) discover work not in accordance with the Contract; or, (iii.) failure to exercise any remedies in connection therewith shall not be deemed an acceptance thereof, nor a waiver of TFC’s right to full performance of the Contract.

(b.) Contractor agrees to conduct all of its services under this Contract by and through appropriate communications with the Contract Administrator. Contractor understands and agrees that any other service performed without the prior written direction of the Contract Administrator is work outside the scope of this Contract and shall be performed exclusively at Contractor’s risk and own expense.

1.8. **EXISTING UTILITIES AND STRUCTURES.** Contractor shall adequately protect TFC’s property, adjacent property and the public. In the event of damage to the Facility as a result of Contractors operations, Contractor shall take immediate steps to notify the Contract Administrator and subsequently repair or restore all services and the Facility to the satisfactory approval of the Contract Administrator. Further, Contractor shall engage any additional outside services which may be necessary to facilitate repairs until services and the Facility is restored. All costs involved in making repairs and restoring disrupted services and the Facility shall be borne by Contractor, and Contractor shall be fully responsible for any and all claims resulting from the damage.

1.9. **SECURITY.** (a.) Contractor shall be solely responsible for the security of its personnel, equipment, materials, and collected revenue. TFC shall not be held liable for any loss or damage to Contractor’s equipment or materials or injury or death of Contractor’s personnel.

(b.) Contractor acknowledges that for some special events, Contractor may need to hire security or off-duty law enforcement officers to monitor cash collections, keep the peace, direct traffic and ensure the safety of Contractor’s employees.

II. TERM.

2.1. **CONTRACT AWARD.** (a.) This Contract shall be effective as of January 1, 2017, and shall expire on August 31, 2017, unless extended by the parties by amendment to this Contract or terminated earlier, as provided in Section 2.03 below. This Contract may be renewed for two (2) additional two (2) year periods, provided that renewal is executed in writing prior to expiration of the current term. Any renewals shall be at the same terms and conditions, plus any approved changes.

(b.) Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records right to audit and independent audit, property rights, dispute resolution, invoice and fees verification and default shall survive the termination or expiration dates of this Contract.

2.2. **WORKING HOURS.** (a.) Contractor shall fully staff the Facility for UTSA tailgating beginning at 7:00 am on the day of each UTSA home football game, and continue staffing duties until one hour after the completion of the game.

(b.) Contractor shall conduct its own research of upcoming events with details shared with TFC, and prepare and submit a monthly calendar to TFC reflecting those events for which Contractor intends to sell parking spaces at the Facility. The monthly calendar shall be provided to TFC no later than one (1) week prior to the beginning of the applicable month. Prior written approval by TFC is required in order for the Contractor to sell parking at any given event.

2.3. **TERMINATION.** (a.) Termination with Default. TFC may terminate this Contract immediately for default by providing written notice to Contractor of such termination if Contractor fails to execute the work properly, performs work in an unsatisfactory manner or fails to perform any provision of the Contract. In the event of abandonment or default, Contractor will be responsible for paying damages to TFC, including but not limited to, the cost to re-solicit this Contract and any consequential damages to the State of Texas or TFC resulting from Contractor's non-performance. 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, unless the scope of work is significantly changed.

(b.) Termination without Default. TFC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice (hereinafter referred to as "Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by TFC under this subsection, Contractor shall be governed by the terms and conditions and shall perform the acts outlined in the following Section 2.03(c.)

(c.) Implementation of Termination. Contractor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary as determined by the Contract Administrator to preserve the work in progress and to protect materials, properties, and equipment. TFC shall pay Contractor for all work satisfactorily performed up to the effective date of termination or reduction in the statement of work in accordance with the prices included in the statement of work.

(d.) Termination by Contractor. Contractor may terminate the Contract upon providing one hundred eighty (180) days written notice to TFC. In the event of termination by Contractor, Contractor shall be governed by the terms and conditions of this Contract and shall perform the acts outlined in Section 2.03(c.) above. Contractor will be held

responsible for additional cost incurred by TFC from the termination of this Contract, including but not limited to the re-solicitation of the services covered by this Contract.

2.4. **UNSATISFACTORY PERFORMANCE.** If Contractor fails to maintain an acceptable level of service, or if in the judgment of the Contract Administrator, Contractor's methods are not adequate to ensure completion of all required services per the terms of this Contract, the Contract Administrator may direct Contractor, at no additional cost to TFC, to revise work schedules or manpower/man-hours to ensure completion of the services. Failure to perform any of the obligations in this Contract may be considered nonperformance of services and may result in informal corrective actions, formal corrective action plans, withholding of payment and/or termination of this Contract. TFC may consider the following as unsatisfactory performance:

- (i.) failure to provide approved, qualified and adequate staffing;
- (ii.) failure to provide required reports;
- (iii.) any material violation of the terms of this Contract;
- (iv.) failure to provide the lists, logs, and/or other deliverables required under this Contract;
- (v.) failure to maintain the Facility and related equipment as required under this Contract;
- (vi.) display of unethical behavior by any Contractor employee or subcontractor employee while engaged in the performance of services under this Contract; and,
- (vii.) failure to promptly correct other performance deficiencies that have been identified by Contract Administrator and communicated to Contractor.

2.5. **CORRECTIVE ACTION PLAN.** (a.) If TFC identifies one or more instances of Contractor's unsatisfactory performance, based on any of the circumstances set forth in Section 2.04 above or otherwise based on Contractor's obligations under this Contract, the Contract Administrator may request a corrective action plan (hereinafter referred to as "Corrective Action Plan") from Contractor by notifying Contractor in writing of the issue(s) which constitute unsatisfactory performance, and direct Contractor to provide a written Corrective Action Plan. Contractor shall deliver a Corrective Action Plan within ten (10) business days of Contract Administrator's notification, and such plan shall be subject to written approval by the Contract Administrator. The Corrective Action Plan shall address how Contractor will correct the instances of unsatisfactory performance identified by TFC, and provide that Contractor shall, unless otherwise approved in advance by the Contract Administrator, complete all actions set forth in the Corrective Action Plan no later than thirty (30) calendar days following Contractor Administrator's approval of the Corrective Action Plan. Failure to correct all identified elements of unsatisfactory performance included in the notice requesting the Corrective

Action Plan within the time as set forth in this paragraph, shall entitle TFC to avail itself of termination of this Contract.

(b.) If Contractor is required to deliver and perform more than one (1) Corrective Action Plan within any period of twelve (12) continuous months during the term of this Contract, and regardless of whether or not Contractor successfully completes such Correction Action Plans, TFC may consider such conduct to amount to Contractor's continuing material nonperformance of services under this Contract. In such an event, TFC shall be entitled to avail itself of one of the following remedies, at TFC's sole discretion:

(i.) imposition of liquidated damages on Contractor in an amount equal to ten percent (10%) of the total gross parking revenue under this Contract, as determined after the deduction of sales taxes due, for the four (4) week period ending on the date TFC first notified Contractor of the need for the primary Correction Action Plan, which amount shall be paid by Contractor to TFC along with the next payment of TFC's share of such gross parking revenue; and/or,

(ii.) termination of this Contract.

2.6. **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.

III. CONSIDERATION.

3.01. **CONSIDERATION PAYABLE BY CONTRACTOR TO TFC FOR RIGHT TO MANAGE AND OPERATE THE FACILITY.** As consideration for TFC's agreement to grant to Contractor the right to manage and operate the Facility and to collect revenue from parking charges in the Facility during the term hereof, Contractor agrees to make payments to TFC in amounts and frequency as described in Exhibit E – Consideration to be Paid by Contractor to TFC.

IV. CONTRACTOR PERSONNEL.

4.1. **PERSONNEL.** (a.) Contractor shall be responsible for staffing and managing the Facility identified by TFC in Exhibit A - GJ Sutton State Office Complex Plan. Contractor shall select qualified, competent and courteous personnel to properly manage, operate, maintain and monitor the Facility and provide parking and special events management. Without limitation, Contractor will take all steps necessary and appropriate to ensure that the following conditions are met:

(i.) parking attendants shall be immediately visible as cars approach to park;

(ii.) an appropriate number of Contractor staff are available to ensure spaces sold prior to or during special events are not compromised by someone entering the Facility without a permit;

(iii.) all Facility entrances and/or exits that are not being utilized are blocked off;

(iv.) a sufficient number of Contractor staff are available during large events to collect fees and to direct vehicles where specifically to park.

(b.) Contractor shall be responsible for training, supervision and management of all personnel employed by Contractor during performance of this Contract.

(c.) All Contractor employees performing services at any event covered by this Contract must wear uniforms displaying Contractor's logo and displaying reflective material or such that the employee is easily and immediately identifiable.

(d.) Contractor shall promptly investigate and correct conditions which give rise to a customer complaint including Contractor employee's conduct, demeanor or appearance. TFC reserves the right to require specific changes in Contractor's staffing.

4.2. **GENERAL AND CRIMINAL BACKGROUND CHECKS.** (a.) Contractor represents and warrants that Contractor and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TFC as to the facts and circumstances surrounding the convictions.

(b.) Contractor's employees and subcontractors that will complete any work under this Contract will be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by Contractor. A complete criminal background check shall be completed before any employee performs services at a Facility, and may be requested at any time thereafter. Criminal background checks must be accomplished by the Texas Department of Public Safety ("DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of Contractor's employees and/or subcontractors, DPS or TFC, will adjudicate the results of the criminal background searches in accordance with the criteria set forth in Exhibit F - Criminal Background Check and Application Guidelines, attached hereto and incorporated herein for all purposes.

4.3. **E-VERIFY.** (a.) By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of:

(i.) all persons employed to perform duties within the State of Texas, during the term of the Contract; and

(ii.) all persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

(b.) Contractor shall provide, upon request of TFC and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of TFC, and at no fault to TFC, with no prior notification. Contractor shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Contract.

(c.) For persons not eligible for E-Verify screening, Contractor (including subcontractors) shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

4.4. **CONTRACTOR ACCESS.** Access routes, entrance gates or doors, parking and storage areas and any imposed time limitations shall be designated by the Contract Administrator. Contractor shall conduct operations in strict observation of the access routes and other areas established as described above. Under no circumstances shall any of Contractor's personnel, vehicles, or equipment enter or move upon any area not authorized by the Contract Administrator for access by Contractor. Upon the approval of the Contract Administrator, Contractor shall have the right to utilize air, water, gas, steam, electricity, and similar items of expense from existing outlets at TFC property.

4.5. **CONTRACTOR PARKING.** Parking for Contractor vehicles when performing work, must be coordinated through the Contract Administrator. Contract Administrator will arrange parking according to parking availability at the job site. Parking in close proximity to the project may not be possible. Subcontractors may be required to utilize remote parking and carpooling when space is not available.

4.6. **CONTRACTOR COOPERATION.** (a.) Contractor agrees to conduct all of its services under this Contract by and through appropriate communications with the Contract Administrator. No work, installation or other services shall be undertaken by Contractor except with the prior written direction of the Contract Administrator.

(b.) Contractor understands and agrees that work, installation or any other service performed without the prior written direction of the Contract Administrator is work outside the scope of this Contract and shall be performed exclusively at Contractor's risk.

(c.) Contractor agrees to cooperate and coordinate its work with that of other Contractors retained by owner. Upon discovery of an apparent conflict in the sequencing of work with another Contractor, Contractor shall report the concern to the Contract Administrator who will resolve the conflict.

V. STATE FUNDING.

5.01. **STATE FUNDING.** (a.) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or TFC in violation of TEX. CONST. art. III, § 49. In compliance with TEX. CONST. art. VIII, § 6, it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

(b.) Furthermore, any damages due under this Contract should not exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach; provided, however, the foregoing shall not be construed as a waiver of sovereign immunity.

VI. RECORDS, AUDIT, PROPRIETARY INFORMATION, AND PUBLIC DISCLOSURE.

6.1. **SUPPORTING DOCUMENTS, RETENTION; RIGHT TO AUDIT; INDEPENDENT AUDITS.** (a.) Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Contract. Contractor and any subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TFC and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

(b.) Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. The acceptance of funds by Contractor or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. Contractor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

6.2. **CONFIDENTIALITY.** Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is:

- (i.) confidential by law;
- (ii.) marked or designated “confidential,” or words to that effect, by TFC; or,
- (iii.) information that Contractor is otherwise required to keep confidential by this Contract.

6.3. **PUBLIC RECORDS.** Notwithstanding any provisions of this Contract to the contrary, Contractor understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552. If contacted by TFC, Contractor shall cooperate with TFC in the production of documents responsive to the request. Contractor agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. Contractor may request that TFC seek an opinion from the Office of the Texas Attorney General. However, the final decision whether to seek a ruling from the Office of the Texas Attorney General will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, Contractor shall notify TFC’s general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Contract and/or any amendment to this Contract. This Contract and/or any amendment to this Contract and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

6.4. **PUBLIC DISCLOSURE.** No public disclosures or news releases pertaining to this Contract shall be made without prior written approval of TFC.

VII. CONTRACTOR’S RESPONSIBILITIES AND WARRANTIES.

7.1. **CONTRACTOR RESPONSIBILITIES.** Contractor shall be responsible for damage to TFC’s Facilities and all associated systems by its work, its negligence in work, its personnel, or its equipment by Contractor’s or subcontractors staff. Contractor shall be responsible and liable for the safety, injury, and health of its working personnel while its employees are performing work for TFC.

7.2. **PERFORMANCE STANDARDS.** All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and shall comply with all federal, state, and local laws, rules, codes and ordinances.

(a.) All Facilities where work is to be performed are professional environments. Contractor employees using inappropriate language or behaving in an inappropriate manner will be asked to leave the premises and documented by the Contract Administrator.

(b.) Contractor shall provide temporary restrooms or portable toilets unless otherwise designated. It is recommended that a separate woman's toilet be provided. Use of only these Facilities will be enforced by Contractor. Toilets will be located with consideration of adjacent property and maintained on a scheduled basis.

(c.) All Contractor employees on jobsite shall:

(i.) wear clean uniforms in good repair daily;

(ii.) keep shirttail tucked in during business hours;

(iii.) bathe daily and be clean at the start of the work day;

(iv.) wash hair daily, comb or brush before starting work and keep trimmed;

and,

(v.) be clean shaven or if facial hair is present, keep trimmed.

7.3. **WARRANTY ON SAFETY AND HEALTH REQUIREMENTS.** Contractor shall procure, at Contractor's expense, all necessary and required licenses and permits necessary for the performance of this Contract. Contractor represents and warrants that the services provided under this Contract comply with all applicable federal health and safety standards, including but not limited to, the Occupational Safety and Health Administration (OSHA), and all Texas health and safety standards.

7.4. **PERFORMANCE WARRANTY.** All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and of local codes and ordinances and any other authority having lawful jurisdiction.

VIII. INSURANCE, INDEMNIFICATION AND LEGAL OBLIGATIONS.

8.1. **INSURANCE.** Prior to the commencement of work under this Contract, Contractor agrees to carry and maintain insurance in the following types and amounts for the duration of this Contract, to furnish certificates of insurance, and make available, at no cost to TFC, copies of policy declaration pages and policy endorsements as evidence thereof:

(a.) Workers' Compensation and Employers' Liability coverage with minimum policy limits for employers' liability of \$1,000,000 bodily injury per accident, \$1,000,000 bodily injury disease policy limit and \$1,000,000 per disease, per employee. Workers' compensation insurance coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(46). Certification in writing from Contractor and subcontractors shall be provided to TFC in accordance with Texas Labor Code, Section 406.096.

(b.) Commercial General Liability with a combined single limit of \$1,000,000.00 per occurrence for coverage A and B including products/completed operations, where appropriate, with a separate aggregate of \$2,000,000.00 for bodily injury and for property damages. The policy shall contain the following provisions:

- (i.) blanket contractual liability coverage for liability assumed under the Contract;
- (ii.) independent contractors' coverage;
- (iii.) State of Texas, TFC, its officials, directors, employees, representatives and volunteers must be listed as additional insureds;
- (iv.) thirty (30) day Notice of Cancellation in favor of TFC; and
- (v.) Waiver of Transfer Right of Recovery Against Others in favor of TFC.

(c.) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per accident for bodily injury and property damage. Alternate acceptable limits are \$500,000 bodily injury per person, \$1,000,000 bodily injury per accident and at least \$500,000 property damage liability per accident. The policy shall contain the following endorsements in favor of TFC:

- (i.) Waiver of Subrogation endorsement;
- (ii.) thirty (30) day Notice of Cancellation endorsement; and
- (iii.) Additional Insured endorsement.

(d.) Umbrella Liability Insurance for an amount of not less than \$10,000,000.00 that provides coverage at least as broad as and applies in excess and follows the form of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

8.2. GENERAL REQUIREMENTS FOR INSURANCE. (a.) Contractor shall be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention shall be disclosed on the certificate of insurance required above. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with the date of this Contract and the certificate of insurance shall state that the coverage is claims made and the retroactive date.

(b.) Contractor shall maintain coverage for the duration of this Contract. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Contract. Contractor shall, on at least an annual basis, provide TFC with an insurance certificate as evidence of such insurance. The premium for this extended reporting period shall be paid by Contractor.

(c.) Contractor shall not commence work under this Contract until they have obtained the required insurance and until such insurance has been reviewed by TFC. Contractor shall not allow any subcontractors to commence work until the required insurance has been obtained and approved. Approval of insurance by TFC shall not relieve or decrease the liability of Contractor hereunder.

(d.) Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A.M. Best rating of A- or better.

(e.) TFC shall be an additional insured as its interests may apply on the Commercial General Liability and Business Automobile Liability Policies policy:

(f.) Contractor shall produce endorsements upon TFC's request to each affected policy.

(i.) naming TFC, P.O. Box 13047, Austin, Texas 78711 as additional insured (except Workers' Compensation and employers' Liability);

(ii.) that obligates the insurance company to notify the TFC Contract Administrator, TFC, P.O. Box 13047, Austin, Texas 78711, of any non-renewal, cancellations or material changes at least thirty (30) days prior to change or cancellation; and,

(iii.) that the "other" insurance clause shall not apply to the State where TFC is an additional insured shown on the policy. It is intended that policies required in this Contract, covering both TFC and Contractor, shall be considered primary coverage as applicable.

(g.) TFC shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.

(h.) Contractor shall not cause any insurance required under this Contract to cancel nor permit any insurance to lapse during the term of this Contract.

(i.) TFC reserves the right to review the insurance requirements of this section during the effective period of the Contract and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions or the claims history of the industry as well as Contractor, such adjustments shall be commercially available to Contractor.

(j.) Contractor shall provide TFC thirty (30) days written notice of erosion of the aggregate limit.

(k.) Actual losses not covered by insurance as required by this Contract shall be paid by Contractor.

(l.) Contractor's insurance shall include a waiver of subrogation to TFC for the Workers' Compensation and Employers' Liability, Commercial General Liability, and Business Automobile Liability policies.

8.3. ACTS OR OMISSIONS. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMERS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

8.4. INFRINGEMENTS. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (i) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (ii) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, (iii) ANY MODIFICATIONS MADE TO THE PRODUCT

BY THE CONTRACTOR PURSUANT TO TFC'S SPECIFIC INSTRUCTIONS, (iv) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TFC, OR (v) ANY USE OF THE PRODUCT OR SERVICE BY TFC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT. IF CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT CONTRACTOR'S SOLE OPTION AND EXPENSE; (i) PROCURE FOR TFC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (ii) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TFC'S USE IS NON-INFRINGEMENT.

8.5. TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY. CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE 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 AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS AGREEMENT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

8.6. LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or

regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

IX. CONTRACTOR GENERAL AFFIRMATIONS.

9.1. **FINANCIAL INTERESTS/GIFTS.** (a.) Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, Contractor has not given, offered to give, 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 this Contract.

(b.) Pursuant to Texas Government Code Chapter 573 and Section 2254.032, if applicable, Contractor certifies that Contractor knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in Contractor's company or corporation. Contractor further certifies that no partner, corporation, or unincorporated association which employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which Contractor will be dealing on behalf of TFC.

9.2. **PRIOR EMPLOYMENT.** Contractor certifies that Contractor shall comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees including "revolving door" provisions. Furthermore, Contractor certifies that if it employs any former employee of TFC, such employee will perform no work in connection with this Contract during the twelve (12) month period immediately following the employee's last date of employment at TFC.

9.3. **ELIGIBILITY.** Pursuant to Texas Government Code Section 2155.004(b), Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

9.4. **FAMILY CODE.** Pursuant to the requirements of Texas Family Code Section 231.006, regarding delinquent child support, the undersigned signatory certifies that the individual or business entity named in this Contract is not ineligible to receive payment under this Contract and, if applicable, Contractor has provided the name and Social Security number of each person (sole proprietors, firm owners, partners, or shareholders) with at least 25% ownership of the business entity entering into this Contract prior to its execution. Contractor acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

9.5. **DEBTS OR DELINQUENCIES TO STATE.** Pursuant to Texas Government Code Section 403.055, Contractor understands and agrees that any payment due under this Contract may be applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support.

9.6. **BUY TEXAS.** If Contractor is authorized to make purchases under this Contract, Contractor certifies that Contractor will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Texas Government Code Ch. 2155.

9.7. **EQUAL OPPORTUNITY.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, religion, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and, selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this non-discrimination article. Contractor shall include the above provisions in all subcontracts pertaining to the work.

9.8. **DECEPTIVE TRADE PRACTICE: UNFAIR BUSINESS PRACTICES.** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under the Texas Business and Commerce Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

9.9. **AGENCY EXECUTIVE HEAD.** Under Texas Government Code Section 669.003 relating to contracting with an executive of a state agency, Contractor represents that no person who, in the past four (4) years, served as an executive of TFC or any other state agency, was involved with or has any interest in this Contract or any contract resulting from this Contractor. If Contractor employs or has used the services of a former executive head of TFC or any other state agency, then Contractor shall provide the following information: the name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Contractor and the date of employment with Contractor.

9.10. **LIABILITY FOR TAXES.** Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Contractor or its employees. TFC shall not be liable for any taxes resulting from this Contract.

9.11. **NO CONFLICTS.** Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.

9.12. **PROHIBITION ON CERTAIN BIDS AND CONTRACTS.** Under Texas Government Code, Section 2155.006, relating to the prohibition of certain bids and contracts, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate. Contractor represents and warrants that during the five (5) year period preceding the date of this Contract, Contractor has not been: (i) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (ii) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39, 459, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

9.13. **IMMIGRATION REFORM.** The Immigration Reform and Control Act of 1986 and 1990 requires that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors and subcontractors who contract with the State. Contractor shall not place any employee of Contractor at a worksite, nor shall Contractor permit any employee, nor any Subcontractor, to perform any Professional Services on behalf of or for the benefit of the State, without first confirming said employee's authorization to lawfully work in the United States.

(a.) Contractor warrants that Contractor: (i) maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with applicable law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to Contractor's senior management; and (iv) is without knowledge of any fact that would render any employee or Subcontractor ineligible to legally work in the United States.

(b.) Contractor further acknowledges, agrees, and warrants that Contractor: (i) has complied, and shall at all times during the term of the Agreement comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement ("DHS-ICE"), including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees; and (iii) has responded, and shall at all times during the term of the Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Agreement, Contractor shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit,

inquiry, inspection or investigation that may be conducted by TFC or any state agency of Contractor or any of its employees.

(c.) Contractor acknowledges, agrees, and warrants that all Subcontractors permitted by it to perform Professional Services will be required to agree to these same terms as a condition to being awarded any Subcontract for such work.

9.14. **MINIMUM WAGE RATE REQUIREMENTS.** Notwithstanding any other provision of this Contract, Contractor hereby represents and warrants that the Contractor shall pay to each of its employees a wage not less than what is currently known as the "Federal Minimum Wage" and any increase or amendments thereto. Furthermore, Contractor shall produce proof of compliance with this provision by Contractor to TFC. TFC shall withhold payments due to Contractor until Contractor has complied with this provision. Prior to any payment being made for work satisfactorily completed and accepted, Contractor shall submit Wage Rate Affidavits with its billing documents affirming that all employees have been paid not less than the current "Federal Minimum Wage".

9.15. **NO LITIGATION WARRANTY.** Contractor represents and warrants that it is not currently a party to any litigation or administrative proceeding, which, if decidedly adversely to Contractor, could reasonably have the potential to affect Contractor's ability to fully and completely perform all of its obligations under this Contract. Contractor agrees that in the event any action, event or circumstance occurs, that could be reasonably expected to adversely affect Contractor's ability to fully and timely perform all of its obligations under this Contract, Contractor shall provide written notice to TFC of such action, event or circumstance, and shall continue to update TFC in writing every thirty (30) days thereafter of the status of the action, event or circumstance, until otherwise directed by TFC.

X. MISCELLANEOUS PROVISIONS.

10.1. **ASSIGNMENT AND SUBCONTRACTS.** (a.) Contractor shall neither assign, transfer, nor delegate any rights, obligations or duties under this Contract without the prior written consent of TFC.

(b.) Notwithstanding this provision, it is mutually understood and agreed that Contractor may subcontract with others for some or all of the services to be performed. TFC shall approve all subcontractors. Subcontractors providing service under this Contract shall meet the same requirements and level of experience as required of the Contractor. No subcontract under the Contract shall relieve Contractor of responsibility for the service. If Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply under the listed circumstances:

(i.) Contractors planning to subcontract all or a portion of the work to be performed under this Contract shall identify the proposed subcontractor on Exhibit G – HUB Subcontracting Plan, as further described in Section 10.02 below;

(ii.) Subcontracting shall be at the Contractor's expense;

(iii.) TFC retains the right to check any subcontractor's background and make the determination to approve or reject the use of submitted subcontractors; and,

(iv.) Contractor shall be the only contact for TFC and subcontractors. Contractor shall list a designated point of contact for all TFC and subcontractor inquiries.

10.2. **HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS).** In accordance with State law, it is TFC's policy to assist HUBs, whether minority or women owned, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling Contractor's obligations with TFC. If Contractor subcontracts with others for some or all of the services to be performed under this Contract, Contractor shall comply with all HUB requirements pursuant to Texas Government Code, Chapter 2161 as described in Exhibit G – HUB Subcontracting Plan, attached hereto and incorporated herein for all purposes. In addition to information required by Section 10.01 above, Contractor shall provide TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on Exhibit G-1 – HSP Progress Assessment Report [FORM], attached hereto and incorporated herein for all purposes. PARs shall be submitted monthly with each invoice and are a condition of payment.

10.3. **FEDERAL, STATE AND LOCAL REQUIREMENTS.** Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any unemployment or workers' compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

10.4. **PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS.** Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's or Contractor's use of or acquisition of any services or other items provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify TFC of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without TFC's prior written approval. Contractor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Contractor

represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

10.5. **TECHNOLOGY ACCESS CLAUSE.** (a.) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas accessibility requirements for electronic and information resources specified in Title 1, Texas Administrative Code, Chapter 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(b.) If applicable, Contractor shall provide the Texas Department of Information Resources (DIR) with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Contractors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

10.6. **RELATIONSHIP OF THE PARTIES.** Contractor is associated with TFC only for the purposes and to the extent specified in this Contract, and with respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor. Subject only to the terms of this Contract, Contractor shall have the sole right to supervise, manager, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or constructed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor to any other party. Contractor shall be solely responsible for, and TFC shall have no obligation with respect to:

- (i.) withholding of income taxes, FICA or any other taxes or fees;
- (ii.) industrial or workers compensation insurance coverage;
- (iii.) participation in any group insurance plans available to employees of the State of Texas;
- (iv.) participation or contributions by the State of Texas to the State Employees Retirement System;
- (v.) accumulation of vacation leave or sick leave; or,
- (vi.) unemployment compensation coverage provided by the State.

10.7. **DRUG FREE WORK PLACE.** Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law No. 100-690, Title V,

Subtitle D; 41U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Contractor, Contractor's employees, and Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

10.8. **COMPLIANCE WITH OTHER LAWS.** In the execution of this Contract, Contractor shall comply with all applicable federal, state, and local laws, including laws governing labor, equal employment opportunity, safety, and environmental protection. Contractor shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Contract.

10.9. **NOTICES.** Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to TFC or Contractor, as the case may be, at the address set forth below:

For TFC: Texas Facilities Commission
1711 San Jacinto Boulevard., Room 400
Austin, TX 78701
Attention: Legal Services Division
Phone: (512) 463-3446
E-Mail: Martin.Blair@tfc.state.tx.us

For Contractor: HBA Parking System Inc.
Attention: Tsegaye Ashenafi, President
807 Brazos Street, Suite 314
Austin, Texas 78701
Telephone: (512) 478-6848
E-Mail: tsegaye@hbaparking.com

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

10.10. **NAME AND ORGANIZATIONAL CHANGES.** (a.) Contractor must provide TFC with written notification of all name changes and organizational changes relating to Contractor including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change. Contractor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for Contractor, Contractor shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Contract and

Contractor shall supply the requested information within five (5) working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor or successor entity, as applicable, to maintain its status as a party to this Contract.

(b.) TFC may terminate the Contract due to any change to Contractor that materially alters Contractor's ability to perform under the Contract.

10.11. **GOVERNING LAW AND VENUE.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this section shall be construed as a waiver of sovereign immunity by TFC.**

10.12. **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

10.13. **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges Contract is effective for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

10.14. **FORCE MAJEURE.** Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure", including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods, earthquakes, hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, TFC may terminate this Contract immediately upon written notification to Contractor.

10.15. **LABOR ACTIVITY.** If any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against the Contractor at TFC's facility, which results in the

curtailment or discontinuation of services performed herein, TFC shall have the right during said period to employ any means legally permissible to have the work performed.

10.16. **DISPUTE RESOLUTION.** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the parties to attempt to resolve all disputes arising under this Contract.

10.17. **COUNTERPARTS.** This Contract may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.

10.18. **NO WAIVER.** Nothing in this Contract shall be construed as a waiver of sovereign immunity by the State of Texas. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TFC does not waive any privileges, rights, defenses, or immunities available to TFC by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

10.19. **FALSE STATEMENTS; BREACH OF REPRESENTATIONS.** By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract, and TFC may terminate or void this Contract for cause and pursue other remedies available to TFC under this Contract and applicable law.

10.20. **SURVIVAL OF TERMS.** Termination of the Purchase Order for any reason shall not release Vendor from any liability of obligation set forth in the Purchase Order that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution and invoice and verification.

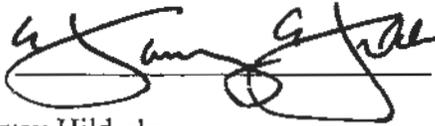
[This Space Intentionally Left Blank]

10.21. **ENTIRE CONTRACT & 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.

TEXAS FACILITIES COMMISSION

HBA PARKING SYSTEM, INC.

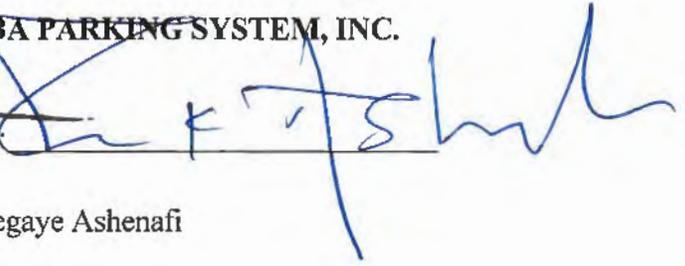
By:



Harvey Hilderbran

Executive Director

By:



Tsegaye Ashenafi

President

NRG G.C.

MI Dir.

LH P.M.

TFC Contract No. 17-040-000
RFP No. 303-6-00748A

EXHIBIT A

TFC CONTRACT NO. 17-040-000

GJ SUTTON STATE OFFICE COMPLEX PLAN

EXHIBIT A

G.J. SUTTON STATE OFFICE COMPLEX PLAN



- Lot 1 is not included in this Solicitation.
- Lot 2 is approximately 79,503 square feet (approximately 225 parking spaces).

EXHIBIT B

TFC CONTRACT NO. 17-040-000

TFC'S COMMERCIAL PARKING

AND

SPECIAL EVENTS ("CPSE") POLICIES

EXHIBIT B

TFC COMMERCIAL PARKING AND SPECIAL EVENTS (CPSE)

POLICIES

Background and Purpose:

Texas Government Code Section 2165.201 provides direction that:

- TFC should “encourage the most efficient use of valuable space in...parking garages”
- TFC should strive to “serve the needs of employees and visitors in the buildings”
- TFC efforts in leasing the parking facilities should “enhance the social, cultural, and economic environment in and near the buildings”
- TFC should also always strive to lease its parking facilities at fair market value.

CPSE Policies on Commercial Parking:

General:

The leasing of state-owned parking facilities is driven by TFC's mandate to use its valuable assets in the most efficient manner possible. In this context TFC is striving to monetize its assets to the greatest degree possible for the benefit of the State. “Leasing”, in context of the CPSE Commercial Parking program, is generally intended to define the short-term, incidental use of TFC parking facilities; such as public parking for an evening to attend a cultural event, or agreements with an institute of higher education addressing a sporting season.

In order to effectively perform its duties, the CPSE Commercial Parking program must rely on parking management vendors. These vendors identify opportunities for the monetization of parking facilities and physically manage the leasing efforts at the parking facilities. The CPSE program establishes the maximum fair market value for the leasing of parking facilities and must also ensure that there are controls in place to properly account for all transactions.

Free State Employee Parking:

State employees displaying a valid identification card may park in State parking lots/garages at no cost.

State employees are limited to one parking space only.

Support Facilities:

Support facilities may be required for various types of events that occur on the parking lot.

Contractor may work with CPSE staff for ensuring:

- adequate portable restroom facilities are procured, timely delivered, maintained, and removed;
- adequate garbage disposal facilities are procured, timely delivered, maintained, and removed;
- adequate temporary fencing facilities are procured, timely delivered, maintained, and removed;
- adequate signage is procured, timely delivered, maintained and removed.

Fair Market Value Determination:

The CPSE program is required by statute to lease parking facilities at fair market values.

Since the value of parking varies based on location, demand, and time, fair market value must be regularly evaluated and confirmed. The process by which fair market value is achieved includes:

1. Yearly evaluation of parking rates charged by commercial and governmental entities in the area.

- a. Rate information collected must be broken down by the parking facility service area.
- b. Rate information must be broken down by time, including:
 - i. Seasonal adjustments
 - ii. Special events
2. The CPSE program evaluates the information collected and consults with Contractor.
3. The CPSE program makes a formal recommendation to executive management staff. Proposed rates should be broken down by:
 - a. Parking facility location
 - b. Time of year
 - c. Events generating parking demands
 - d. Institutions of higher education
4. Executive Management makes a final determination and approval of fair market value.

Parking Management:

In order to maximize the efficient use of state-owned parking facilities the CPSE program must continually manage their usage. The management of parking facilities is handled by CPSE staff and through Contractor hired by the program. Duties associated with the management of parking facilities include, but are not limited to:

1. In-house Management:
 - a. Complaint Management
 - b. Inspect parking facilities
2. Outsourced Management:
 - a. Solicit Contractor services:
 - b. Oversee and Manage Contract:
 - c. Communicate changes in facility availability:
 - i. Facilities leased at reduced or no cost
 - ii. Facilities out of service due to construction projects
 - iii. Facilities out of service due to Executive Director action

EXHIBIT C

TFC CONTRACT NO. 17-040-000

TFC PARKING CONTRACTOR PAYMENT PROCESSING PROCEDURES

EXHIBIT C

TFC PARKING CONTRACTOR PAYMENT PROCESSING PROCEDURES

The contractor opens to sell at a fee not to exceed the maximum chargeable rate set by the TFC. The contractor may charge more or less as directed & approved by TFC. Vehicles are not granted in & out privileges

Normal After Hour Special Events - Collect cash or credit card payment at point of entry. Open the State lot when there is a Charge event in the area.

Special Event (Pre-Paid in Advance) – either at a reduced or normal rate – TFC processes the 'Request for Use' form and approves the rate. The requestor contacts the parking contractor directly in advance to submit payment by Cash, Check or Credit Card. TFC provides a parking pass to utilize the pre-paid spaces.

Non-Profit organizations - TFC processes the 'Request for Use' form and approve free use of State facilities. The special event organizer MAY solicit the services of the TFC parking contractor for a fee to "secure or hold" various State parking facilities for event setup. *(Note: Example MS150 Bike Ride).

State Employee FREE special event parking - Legislatively mandated through SB1533, the TFC parking contractor is to accept the State of Texas Valid Employee Photo ID to allow the employee to utilize (1) parking space at no charge. Some special events the State employee MAY only be authorized free parking in "designated" State garages/lots. *(Note: for example when TFC sells a State Garage or Lot in its entirety or the majority of spaces, then access to other garages/lots is made available to State employees on a first come first serve basis.) The TFC parking contractor is to provide a separate parking permit for the use of free parking spaces & are required to track the number of State employees utilizing the option of a free parking space. No fee is to be collected. *(Note: Retired State Employees no longer receive this privilege.)

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

EXHIBIT D

TFC CONTRACT NO. 17-040-000

LIMITATIONS ON AMOUNTS CHARGEABLE FOR PARKING

EXHIBIT D

LIMITATIONS ON AMOUNTS CHARGEABLE FOR PARKING

Maximum amount chargeable by Contractor per space for parking at any Facility shall not exceed the following for each type of event listed:

University of Texas San Antonio ("UTSA") football games (excluding tailgating)	\$20
Tailgating space(s) in conjunction with UTSA football games	\$40
UTSA sporting events other than football	\$15
Concerts and other special events not otherwise listed	\$20
School or UIL-sponsored events (e.g. graduation ceremonies)	\$15
Daily parking rates	\$10

In order to help to ensure that rates charged are reasonable relative to local market prices and the type of event involved, TFC shall have the right to perform a market assessment of the Contractor's pricing at least once per each twelve month period during the term of this Contract. TFC, in its sole discretion, shall have the right to direct Contractor to adjust the maximum rate chargeable for Facility parking if so indicated by the results of that assessment. Subject to and without limitation on TFC's rights as set forth in the foregoing sentence, TFC and Contractor may at any time during the term hereof, mutually agree to adjust the maximum rates listed on this exhibit.

REMAINDER OF THIS SPACE INTENTIONALLY LEFT BLANK

EXHIBIT E

TFC CONTRACT NO. 17-040-000

CONSIDERATION TO BE PAID BY CONTRACTOR TO TFC

Chair
Robert D. Thomas

Commissioners
William D. Darby
Patti Jones
Mike Novak
Jack W. Perry
Betty Reinbeck
Joseph O. Slovacek



Executive Director
Harvey Hilderbran

Mailing address:
P. O. Box 13047
Austin, TX 78711-3047
(512) 463-3446
www.tfc.state.tx.us

ADDENDUM #3

DATE: 11/08/2016
REQ #: 303-6-00748A
TITLE: Parking Services, San Antonio, TX
PROPOSAL DEADLINE: November 9, 2016

Addendum item #1: to **REQUEST Best and Final Offer:**

OPTION 1 – REVENUE SHARING MODEL – BEST AND FINAL OFFER

During the term of this Contract, on a weekly basis no later than the fifth business day of each week, Contractor shall pay to TFC a percentage of the gross parking revenue collected by Contractor for the immediately preceding week. The percentage to be paid to TFC shall be calculated based on 100% of the week's gross revenue, but reduced by the amount of sales and/or other taxes due. Payment shall be submitted to TFC in the form of a check or money order made payable to the Texas Facilities Commission and sent to the Texas Facilities Commission, Attn: Chief Financial Officer, PO Box 13047, Austin, TX 78711.

The percentage of gross parking revenue to be paid by Contractor to TFC hereunder on a weekly basis is:

TFC percentage = 35 %

Contractor percentage = 65 %

Contractor's obligation to make payments to TFC as provided in this Attachment D shall have no effect whatsoever on Contractor's obligations to collect and remit to the appropriate authority(ies), all sales and/or other applicable taxes that may become due and owing based on revenue collected by Contractor pursuant to its performance under this Contract.

Addendum item #2: to **ADD the REQUIREMENT TO NEGOTIATE** at each renewal period:

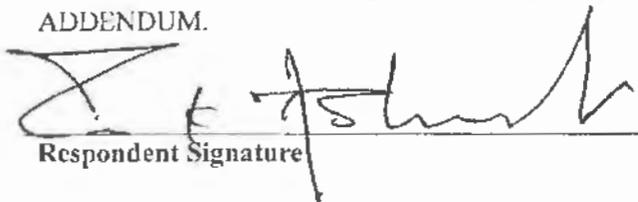
TFC reserves the right to request revenue data at any time during the contract, and, at each renewal period, shall evaluate the provided data in order to establish a justification for negotiation of the awarded percentage allocations for both TFC and the awarded vendor.

All other aspects of the **RFP 303-6-00748A** remain as is.

Colin Gresham, CTPM, CTCM
TFC Procurement Department
Phone: 512-936-0647
Email: colin.gresham@tfc.state.tx.us

RECEIPT OF ADDENDUM #3 OF RFP 303-6-00748A

IN YOUR SUBMITTAL THE RESPONDENT SHALL ACKNOWLEDGE RECEIPT OF THIS
ADDENDUM.



Respondent Signature

11/08/16

Date

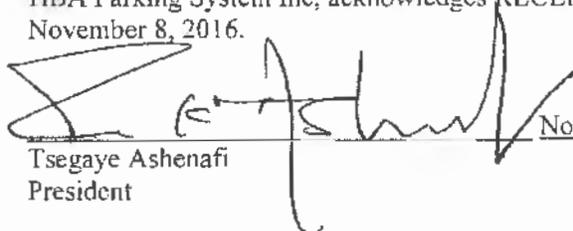
Tsegaye Ashenafi

Printed Name

HBA PARKING SYSTEM, Inc

Company Name

HBA Parking System Inc, acknowledges RECEIPT OF ADDENDUM #3 OF RFP 303-6-00748A on
November 8, 2016.



November 8, 2016

Tsegaye Ashenafi
President

EXHIBIT F

TFC CONTRACT NO. 17-040-0004

CRIMINAL BACKGROUND CHECK AND APPLICATION GUIDELINES

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

TEXAS FACILITIES COMMISSION
CRIMINAL BACKGROUND CHECKS AND APPLICATION
GUIDELINES

It is the policy of the Texas Facilities Commission ("TFC") that all contractor employees and subcontractors that will complete any work on-site at a state-owned property may be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by the contractor. Contractor employees and subcontracts who work in case-sensitive areas shall be required to submit to a criminal history background check. If requested by TFC, a complete criminal background check shall be completed before any employee performs services at the site. Criminal background checks must be performed by the Texas Department of Public Safety ("DPS") and must be on the form provide by TFC.

I. CRIMINAL HISTORY CRITERIA

Employers should use the following criminal history criteria when hiring employees to perform work for TFC. Any employee failing to meet the minimum standard will be denied. If special circumstances exist, please contact the TFC representative for clarification or further consideration.

A conviction or deferred adjudication for one of the following offenses will result in the **permanent disqualification** of a person from eligibility to provide contractual services with Texas Facilities Commission:

- (i) any act causing death as defined in Texas Penal Code; and
- (ii) any felony or misdemeanor involving arson, burglary, breach of computer security, credit card abuse, counterfeiting, forgery, kidnapping, robbery, stalking, terroristic threat, theft, and any sexual offense designated as a felony in Texas Penal Code.

Additionally, anyone who has a current duty to register as a sex offender, is under indictment or is a fugitive from justice is disqualified.

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

For individuals who have a conviction or deferred adjudication for felonies not enumerated above, 10 years must have passed from the time of disposition or discharge of probation in order for that person to be eligible to provide contractual services with the TFC.

For individuals who have a misdemeanor conviction or deferred adjudication for misdemeanors not enumerated above, 5 years must have passed from the time of disposition or discharge of probation in order for that person to be eligible to provide contractual services with the TFC.

II. CRIMINAL BACKGROUND PROCESS

DPS has entered into an exclusive contract with Identogo Centers, formerly L-1 Enrollment Services, operated by MorphoTrust USA. Identogo by MorphoTrust is the exclusive live scan fingerprinting provider for DPS. All TFC contractors that are subject to TFC criminal background check requirements must create an account with Identogo in accordance with the Identogo Account Application and requirements attached hereto as "Attachment A". Thereafter, all contractor employees and subcontractors must follow the registration procedures attached hereto as "Attachment A" including using the *Texas Facilities Commission Service Code 11G6ZN*. All necessary instructions and information to schedule a fingerprint appointment is included in Attachment A. In addition, the only service code accepted by DPS for a TFC criminal background check is the service code provided in Attachment A, hereto, therefore, if an individual does not use the service code in Attachment A, he or she may be required to repeat the process at the expense of contractor. Contractors can begin the process by simply clicking on this link:

<https://uenroll.identogo.com/servicecode/11G6ZN>

Additionally, forms and instructions can be found on the Identogo website at <http://www.identogo.com> by clicking on the State of Texas. Links on that page include one for online scheduling and a list for the state-wide fingerprinting locations. The waiver form for the criminal background check is attached hereto as "Attachment B". In the event Contractor needs to set up a new account, please refer to the attached link for instructions: <http://www.l1enrollment.com/state/forms/tx/566718664f05a.pdf>.

III. CRIMINAL HISTORY ERROR RESOLUTION

The Error Resolution Unit ("ER") is responsible for updating and evaluating possible errors in criminal history records. Potential errors are reported to ER by law enforcement, judicial agencies, as well as private citizens.

If an applicant would like to make a request that a criminal history record be updated or corrected, the applicant will need to supply certified documents to the ER. Required forms and additional information submit a correction request to the ER can be found at:

http://txdps.state.tx.us/administration/crime_records/pages/errorresolution.htm.

IV. TFC CONTACTS

For any questions involving the TFC criminal background check process, please contact the following:

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

Tommy Oates, Deputy Executive Director
Office: 512-463-3057
Cell: 512-463-3376
Email: tommy.oates@tfc.state.tx.us

Shawn Finley, Manager
Office: 512-463-1668
Cell: 512-84B-3111
Email: shawn.finley@tfc.state.tx.us

Sharee Johns, Team Lead
Office: 512-463-6157
Cell: 512-961-2928
Email: sharee.john@tfc.state.tx.us

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

ATTACHMENT A**Facilities Commission (ORI Facilities Commission/Service Code 11G6ZN)**

The general process for electronic fingerprinting is:

1. Schedule an appointment to be electronically fingerprinted by MorphoTrust USA at one of their IdentoGo enrollment centers.
 - Internet based scheduling is the quickest and most convenient way to obtain a fingerprint appointment.
 - a. **You may begin the process now by simply clicking on this link:**
<https://uenroll.identogo.com/servicecode/11G6ZN>
 - b. Provide all required pre-enrollment data and select a convenient date and time for your appointment
 - If you prefer to schedule over the telephone, you must:
 - a. Have your Service Code ready (**11G6ZN**), then call **888.467.2080**;
 - b. MorphoTrust will prompt you for the Service Code (**11G6ZN**);
 - c. Provide all required pre-enrollment data and select a convenient date and time for your appointment
2. Arrive at your scheduled appointment with your photo identification and fee
 - If you plan on bringing a form of identification other than a valid (unexpired) TX Driver License, please refer to the Department of Public Safety's acceptable document types here: <http://www.t1enrollment.com/state/forms/tx/55fc619a7f7aa.doc>
 - MorphoTrust accepts Visa/MasterCard/Discover/American Express, business checks, money orders and coupon codes (employer accounts) at the time of service.
 - Please note that personal checks and cash are **not accepted**.
3. Your fingerprints will be submitted electronically to DPS and the FBI. You will not receive a printed fingerprint card.
4. At the conclusion of your appointment, the MorphoTrust enrollment agent will provide you with an IdentoGo receipt stating that you were fingerprinted.
 - Do not throw away the receipt;
 - You may check status on your submission by clicking on this link:
<https://uenroll.identogo.com/servicecode/11G6ZN> and then;
 - Click "**Check Status**"

Fingerprints provided for this application shall be used to check criminal history records of the Texas Department of Public Safety and the Federal Bureau of Investigation, in accordance with applicable statutes.

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

ATTACHMENT B



IdentoGO
By MorphoTrust USA

Facilities Commission

Texas Fingerprint Service Code Form

Service Name: Facilities Commission

To schedule your ten-minute fingerprint appointment, simply visit
<https://uenroll.identogo.com> and enter the following Service Code

11G6ZN

Service Code is unique to your hiring/licensing agency. Do not use this code for another purpose.

Background Check Waiver

I certify that all information I provided in relation to this criminal history record check is true and accurate. I authorize the Texas Department of Public Safety (DPS) to access Texas and Federal criminal history record information that pertains to me and disseminate that information to the designated Authorized Agency or Qualified Entity with which I am or am seeking to be employed or to serve as a volunteer, through the DPS Fingerprint-based Applicant Clearinghouse of Texas and as authorized by Texas Government Code Chapter 411 and any other applicable state or federal statute or policy.

I authorize the Texas Department of Public Safety to submit my fingerprints and other application information to the FBI for the purpose of comparing the submitted information to available records in order to identify other information that may be pertinent to the application. I authorize the FBI to disclose potentially pertinent information to the DPS during the processing of this application and for as long hereafter as may be relevant to the activity for which this application is being submitted. I understand that the FBI may also retain my fingerprints and other applicant information in the FBI's permanent collection of fingerprints and related information, where all such data will be subject to comparisons against other submissions received by the FBI and to further disseminations by the FBI as may be authorized under the Privacy Act of 1974 (5 USC 552a). I understand my fingerprints will be searched by and against civil, criminal and latent fingerprints in the Next Generation Identification (NGI) system. I understand I am entitled to obtain a copy of any criminal history record check and challenge the accuracy and completeness of the information before a final determination is made by the Qualified Entity. I also understand the Qualified Entity may deny me access to children, the elderly, or individuals with disabilities until the criminal history record check is completed. If a need arises to challenge the FBI record response, you may contact the agency that submitted the information to the FBI, or you may send a written challenge request to the FBI's Criminal Justice Information Services (CJIS) Division at FBI CJIS Division, Attention: Correspondence Group, 1000 Custer Hollow Road, Clarksburg, WV 26306.



Don't have access to the Internet? You can still schedule an appointment by calling 888.467.2080

EXHIBIT G

TFC CONTRACT NO. 17-040-000

HUB SUBCONTRACTING PLAN



HUB Subcontracting Plan (HSP)

Rev 09/15

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

-- Agency Special Instructions/Additional Requirements --

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent does not have a continuous contract in place for more than five (5) years shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study*

****ATTENTION:** Failure to submit an HSP or demonstrate good faith efforts in accordance with Title 34 Texas Administrative Code §20.14 will deem your proposal non-responsive and will not be considered for award.

The HSP is a Pass/Fail element of your proposal.

*****Second-tier Texas certified HUB participation contributes toward meeting good faith efforts. Indicate second-tier HUBs on the HSP for Attachment A, Section A-2 or Attachment B, Section B-4.*****

For questions or assistance completing your HSP, please contact the HUB Program Director, Dinita Caldwell at 512-475-0453 or Deborah Toodle at 512-305-9269 or send an e-mail to HUB@tfc.state.tx.us.

SECTION-1 RESPONDENT AND REQUISITION INFORMATION

a. Respondent (Company) Name: <u>HBA Parking System, Inc.</u>	State of Texas VID #: <u>1900037163</u>
Point of Contact: <u>Marissa Stoker</u>	Phone #: <u>512-478-6848</u>
E-mail Address: <u>Mail@HBAParking.com</u>	Fax #: <u>512-481-1400</u>
b. Is your company a State of Texas certified HUB? <input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No	
c. Requisition #: <u>303-6-00748A</u>	Bid Open Date: <u>10/25/2016</u>

(mmdd/yyyy)

Enter your company's name here: HBA Parking System, Inc.

Requisition #: 303-6-00748A

SECTION-2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including contracted staffing, goods, services, transportation and delivery will be subcontracted. Note: In accordance with 34 TAC §20.11, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b of this SECTION and continue to Item c of this SECTION.)
- No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods, services, transportation and delivery. (If No, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1	966/76 Print-On-Demand Services	4.9 %	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		4.9 %	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/proc/hub/hub-subcontracting-plan/>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (If No, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you do not have a continuous contract* in place with for more than five (5) years, meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include transportation and delivery under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: HBA Parking System, Inc. Requisition #: 303-6-00748A

SECTION 3 SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

If you responded "No" to SECTION 2, Item a, in the space provided below explain how your company will perform the entire contract with its own employees, supplies, materials and/or equipment, to include transportation and delivery.

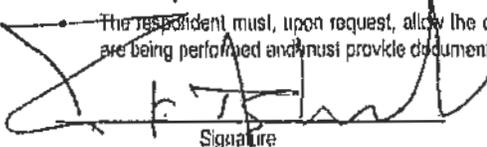
[Empty box for justification text]

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report - PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/proc/hub/hub-forms/progressassessmentrot.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.

The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.


Tsegaye Ashenafi
President
10/21/2016

Signature Printed Name Title Date
(m.m/yy/yyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

- Related Links**
- CMBL/HUB Directory Search Tips
 - Register For CMBL - HUB
 - HUB Mentor Protege Agreement Listing
 - System for Award Management (EPLS)
 - Debarred Vendors List

SIR SPEEDY #4092

CMBL/HUB Vendor Detail	
Vendor ID / Vendor Number	1742949153700 / 75156
Vendor Name	SIR SPEEDY #4092
Vendor Address	3818 FAR WEST BLVD STE 105 STE 105 AUSTIN, TX 78731-3050 USA
County	TRAVIS
Contact	President/CONNIE JOHNS
Phone/Fax	512-338-9818/512-338-9858
Email Address	connie@sirspeedy4092.com
Website	http://www.sirspeedyn4092.com
Business Description	Document and Marketing Services--Printing, Digital High Speed Output & Copying, both Color & Black & White, Posters, Signs, Banners, Graphic Design, Finishing Services, Mailing Services, Scanning to Archive, Free Pick-up & Delivery, Free Consultation
Business Category	Other Services Including Legal Services (06)
Small Business	Yes
CMBL Status	Active Bidder
CMBL Expires	13-AUG-2017
HUB Status	Active Bidder (A - Approved; Active Texas certified HUB)
HUB Expires	14-OCT-2020
HUB Eligibility	WO (American Woman)
HUB Gender	F

Vendor Performance	Score	# of POs
Commodity Delivery	*	0
Commodity Performance	*	0
Service Delivery	*	0
Service Performance	*	0
Non-Scored Reports:	Satisfactory	Unsatisfactory
Delegated, Exempt, and Blanket POs	0	0
Exceptional Performance Reports	0	

Class Item	Commodity Description (bold for all items in class)
966	PRINTING AND TYPESETTING SERVICES
966-07	Business Cards Printing
966-18	Copying Service, Reproduction
966-25	Digital Printing
966-31	Envelope and Mailer Printing
966-36	Forms Printing, Not Continuous

EXHIBIT G-1

TFC CONTRACT NO. 17-040-000

HSP PROGRESS ASSESSMENT REPORT [FORM]

