CONTRACT
FOR
GROUNDS MAINTENANCE SERVICES
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
MALDONADO NURSERY & LANDSCAPING, INC.
RENEWAL OF CONTRACT NO. 16-008-000

The Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Blvd., Austin, Texas 78701 and Maldonado Nursery & Landscaping, Inc. (hereinafter referred to as "Contractor"), located at 9800 Brown Lane, Austin, Texas 78754, enter into the following contract for grounds maintenance services (hereinafter referred to as the "Contract") pursuant to Tex. Gov't Code Ann. Ch. 2165 (West 2016). (Renewal of Contract No. 16-008-000.)

I. STATEMENT OF WORK.

1.01. **SERVICE REQUIREMENTS.** Contractor shall provide grounds maintenance services for TFC at various State-owned properties, as depicted in Exhibit A - Property List, Compensation and Fees and Exhibit A-1 – Irrigation Systems, attached hereto and incorporated herein for all purposes. Contractor shall provide all labor, materials (exclusive of fertilizer and mulch), equipment, tools and transportation required to perform these services. Contractor shall meet once weekly or as determined by the TFC Contract Administrator or his/her designated representative, as defined in Section 1.02 of this Contract, to review the planned services, processes, facilities or site walks. Exhibit B – Service Report, attached hereto and incorporated herein for all purposes, reflects the form and content required to be included by Contractor in its service report, which shall be completed and submitted via email to the TFC Contract Administrator within three (3) business days following the date of each visit to one or more of the properties listed on Exhibit A.

1.02. **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 the "Contract Administrator") are to be strictly and promptly followed by Contractor at all times. TFC's Contract Administrator is to have free access to Contractor's materials 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 chemicals, supplies, tools, and equipment furnished, as well as the manner of performance, the rate of progress of the work, and the results of the work performed.

(b) The Contract Administrator may make temporary changes in the assignments, tasks, task frequencies or methods required under this Contract. If such changes do not require additional equipment, chemicals, supplies, or significant man-hours, such changes shall not be considered modifications of the Contract and shall not affect the amount of payment to Contractor. The Contract Administrator will determine the amount of work performed and materials furnished that are to be paid under the Contract. Failure of the Contract Administrator during the progress of the Contract to discover or reject unacceptable work or work not performed in accordance with the Contract, or to exercise any remedies, shall not be deemed an acceptance or a waiver of TFC's

right to full performance of the Contract. However, the Contract Administrator does not have any express or implied authority to vary or amend the terms of the Contract or to waive strict performance of the terms or conditions of the Contract.

(c) Contractor agrees to conduct all of its services under this Contract by and through appropriate communications with the Contract Administrator. No other additional services shall be undertaken by Contractor except with the prior written direction of the Contract Administrator.

1.03. **LAWN CARE SCHEDULE.** (a) All lawn areas are to be mowed weekly between March 15th and November 15th of each year and up to twice per month between November 16th and March 14th of each year, or as determined by the TFC Contract Administrator. Mowers are to be powered by an alternative fuel. All mowers must have mulch kits with mulching blades set as warranted by seasonal requirements, typically no less than approximately two (2) inches and no more than three (3) inches cutting height. Appropriate size mowers shall be used for each area. Excessive grass clippings will be removed in a manner satisfactory to the TFC Contract Administrator. Each mowing, where possible, will be performed in a different pattern to prevent mower tracking. The following exceptions to the requirements in this Section 1.03(a) are as follows. Line Items are those depicted in Exhibit A – Property List, Compensation and Fees:

(i) Line Item 6 = 18 visits per year

(ii) Line Item 22 = 26 visits per year

(iii) Line Item 24 = 6 visits per year

(iv) Line Item 25 = 6 visits per year

(v) Line Item 26 = 18 visits per year

(vi) Line Item 29 = 12 visits per year

(vii) Line Item 30 = 26 visits per year

(b) **EDGING.** Contractor shall trim all turf perimeters along and around curbs, walks, streets, tree rings, edging, utility poles and other fixtures at each mowing or at intervals sufficient to maintain a well-groomed and neat appearance as determined by the TFC Contract Administrator. Chemical edging shall be prohibited.

(c) **HARD SURFACED AREAS.** Contractor shall blow or swept clean all hard surfaces after each operation. All debris including leaves and acorns shall be removed and disposed of properly as determined by the TFC Contract Administrator.

(d) **TRIM.** Contractor shall trim all groundcover to maintain appropriate height, shape and an overall neat and clean appearance.

(e) **TURF AERATION.** All irrigated turf areas shall be core aerated once per year, unless otherwise directed by the TFC Contract Administrator, to promote turf health before fertilizing in April. Sprinkler heads shall be flagged to avoid breakage from the aeration process. Any damage caused during this process will be the responsibility of the Contractor.

1.04. **FERTILIZATION.** Contractor shall provide the following fertilization services under this Contract.

(a) All turf shall receive two (2) applications of TFC provided fertilizer on approximately April 1st and October 15th of each year subject to prior approval by the TFC Contract Administrator.

(b) All beds shall receive two (2) applications of TFC provided granular fertilize prior to mulch application on approximately April 1st and October 1st of each year subject to prior approval by the TFC Contract Administrator.

1.05. **WEED CONTROL.** All planting beds, tree rings, hardscape, and rock areas shall be maintained in a weed free condition in a manner satisfactory to the TFC Contract Administrator. Contractor shall provide the following weed control services under this Contract.

(a) All weeds and grass growing through pavement/hardscape areas will be sprayed with an approved herbicide and/or removed, as needed.

(b) Weeds and undesirable grasses in planting beds, tree rings, hardscape, and rock areas shall be removed or treated, as needed in a manner satisfactory to the TFC Contract Administrator.

(c) Post emergent weed control on turf areas shall be applied twice per year, and as needed to control weeds or as determined by the TFC Contract Administrator. All products used must be approved by the TFC Contract Administrator.

1.06. **MULCH.** Contractor shall apply approximately one (1) inch of TFC provided hardwood mulch to maintain approximately two (2) inches of mulch on all trees rings and mulched bed areas twice per year unless otherwise directed by the TFC Contract Administrator. Prior to mulch application, areas will be cleaned of weeds and excessive plant debris.

1.07. **SHRUB, PERENNIAL, AND TREE PRUNING.** Contractor shall provide the following shrub, perennial, and tree pruning services under this Contact.

(a) **SHRUBS.** Prune, shear, or trim all shrubs to maintain appropriate size and shape, encourage vigor and flowering, and remove deadwood. All trimming shall be removed and composted.

(b) **PERENNIALS.** Prune and shape all perennials to maintain appropriate size, to encourage vigor and flowering, and after winter die back. All trimmings shall be removed and composted.

(c) **TREES.** Primary pruning up to eight (8) feet on trees shall be performed during the dormant season. All pruning cuts shall be made to lateral branches, buds and be cut flush with the trunk. All suckers up to eight (8) feet high will be removed on each visit. Damaged trees, or those that constitute a health or safety hazard, shall be pruned any time of the year as required. All dead wood shall be pruned, as needed. Oaks shall only be pruned between December 15th to February 15th and July 15th to August 15th of each year. Tree wound dressing shall be applied immediately at time of pruning to all oaks or as determined by the TFC Contract Administrator. All branches trimmed by Contractor shall be chipped for mulch. Major tree trimming or pruning above eight (8) feet is excluded under this Contract. All pruning shall be in accordance with applicable standards and codes.

1.08. **DEBRIS AND LITTER REMOVAL.** All maintained areas included under this Contract shall be policed for debris at each visit. Contractor shall remove all collected debris from the site including landscaped areas, parking areas, street, and driveways and disposed of properly. In addition, trash pickup shall be completed in all areas prior to mowing and edging.

1.09. **IRRIGATION.** (a) Upon request Contractor shall inspect all irrigation systems at least once per month throughout the year. Contractor shall adjust the setting of the controllers for correct seasonal water application for optimal growth, reduction of water waste, or as approved by the TFC Contract Administrator.

(b) Contractor shall check all valves, heads, controls and sensors once per month for proper operation. A written report must be provided to the TFC Contract Administrator, showing needed repairs and detailed pricing for any repair.

(c) Contractor shall provide an "after-hours" irrigation emergency telephone number to the TFC Contract Administrator.

(d) All irrigation repairs shall be detailed and billed separately. All repairs shall require written approval by the TFC Contract Administrator.

1.10. **SERVICE CALL.** For the purpose of evaluating performance under this Contract, a "Service Call" is defined as any additional services that are requested by the TFC Contract Administrator.

1.11. **MAINTENANCE AND DELIVERY RELEASE.** (a) TFC may, from time to time, request Contractor through a Service Call to complete additional grounds maintenance services. Such requests for services shall be documented through a separate document (hereinafter referred to as a "Delivery Release"). Such Delivery Releases will constitute amendments to this Contract, subject to the terms and conditions set forth in this Contract, and shall include a description of the scope of services, schedule and term, and compensation specific to the Delivery Release which shall be negotiated at the time of such Delivery Release. Any work completed by Contractor without a Delivery Release will not be paid for by TFC.

(b) Contractor understands and agrees that no guaranteed minimum number of Delivery Releases will arise from this Contract.

(c) Upon receipt of a Delivery Release, Contractor shall respond to the TFC Contract Administrator, on-site within forty eight (48) hours. Contractor shall perform all work under a Delivery Release within the timeframe agreed upon; if Contractor cannot perform the work within timeframe stated, Contractor may be subject to liquidated damages up to twenty percent (20%) of total cost of the Delivery Release.

(d) Contractor shall check in and out with the TFC Contract Administrator to ensure that the Contract Administrator logs the commencement and completion times for the "Service Ticket" for the services performed under a Delivery Release. Contractor shall provide the following information on the Service Ticket:

(i) building name;

(ii) TFC work order number;

(iii) name of Contractor personnel performing the work;

(iv) trade category of person performing the work;

(v) number of hours worked; and,

(vi) narrative description of the completed services.

1.12. **CALLBACK.** For the purpose of evaluating performance under this Contract, a "Callback" is defined as a failure to successfully complete the Service Call to the satisfaction of the Contract Administrator.

1.13. **CALLBACK RESPONSE.** Failure by the Contractor to successfully complete a Service Call will result in a Callback. The TFC Contract Administrator will contact the Contractor and notify them of the Callback situation. The Contractor will respond to the Callback no later than the next business day with any required labor or material to correct the problem. The Contractor shall check in and out with the TFC Contract Administrator, to ensure that the Contract Administrator logs the commencement and completion times for the "Callback Service Ticket" for the services performed to satisfactorily complete the additional services as described in the original Delivery Release. Contractor shall provide the following information on the Callback Service Ticket:

(i) building name;

(ii) TFC work order number;

(iii) name of Contractor personnel performing the work;

(iv) trade category of person performing the work;

(v) number of hours worked; and

(vi) narrative description of the completed services.

1.14. **OZONE DAYS.** On declared Ozone Days, Contractor will comply with recommendations for services to be performed as directed by the TFC Contract Administrator, by complying with the following recommendations:

(i) delayed start;

(ii) use of alternative fuel equipment;

(iii) re-scheduling services; and

(iv) by complying with all state and federal regulations

1.15. **CONTRACTOR SUPERVISION.** Contractor shall designate a supervisor for this Contract, who shall serve as the contact for Contractor and shall visit all selected job sites covered by this Contract at a minimum of one visit per site per service. In addition, after each required site visit, Contractor shall complete a service report, in the form and including the content as set forth in Exhibit B – Service Report, attached hereto, and submit such report via email to the TFC Contract Administrator within three (3) business days following the date of the visit. Additional visits may be required if requested by TFC Contract Administrator. Exhibit B – Service Report, may at any time be modified at the discretion of the TFC Contract Administrator, and the form of such reports shall be provided to Contractor via email

1.16. **CONTRACTOR ACCESS.** Access routes, entrance gates or doors, parking and storage areas, and other necessary Contactor access, along with any imposed time limitations shall be designated by TFC's Contract Administrator. Contractor shall conduct operations in strict observation of the access routes and other areas established. Under no circumstances shall any of Contractor's personnel, vehicles, or equipment enter or move upon any area not authorized by TFC's Contract Administrator for access by Contractor.

1.17. **EXISTING UTILITIES AND STRUCTURES.** Contractor shall adequately protect the work, TFC's property, adjacent property and the public. In the event of damage to facilities as a result of Contractor's operations, Contractor shall take immediate steps to notify TFC's Contract Administrator and subsequently repair or restore all services to the satisfactory approval of TFC's Contract Administrator. Further, Contractor shall engage any additional outside services which may be necessary to facilitate repairs until services are restored. All costs involved in making repairs and restoring disrupted services shall be at the expense of Contractor, and Contractor shall be fully responsible for any and all claims resulting from the damage. TFC's Contract Administrator may elect to perform such repairs and deduct the cost of such repairs, replacements, and outside services from amounts due to Contractor. Upon the approval of TFC's Contract Administrator, Contractor shall have the right to utilize air, water, gas, steam, electricity, and similar items of expense from existing outlets on TFC's property.

1.18. **WASTE REMOVAL.** Contractor shall keep the premises clean on a continual basis, and no trash or debris will be permitted to accumulate in work areas. Contractor shall be responsible for removal and disposal of all trimmings, debris and waste materials associated with this Contract.

1.19. **SECURITY AND IDENTIFICATION.** Contractor shall abide by all procedures and rules as conveyed by TFC's Contract Administrator regarding security requirements of the property where work is to be performed. All Contractor and any subcontractor personnel must wear proper clothing in order to cover the entire body. Shorts and/or muscle shirts shall not be worn at any time. In addition, appropriate personal injury protective devices shall be worn when operating any powered equipment.

1.20. **DISPOSAL OF SALVAGEABLE ITEMS.** TFC's Contract Administrator shall mark and/or otherwise inform Contractor of any material that will be salvaged by TFC. Disposal may include depositing in a central location for salvage by TFC or delivery to TFC's warehouse located at 6506 Bolm Road, Austin, Texas or such other location as determined by TFC's Contract Administrator.

1.21. **SMOKING.** All TFC facilities where work is to be performed are nonsmoking buildings. Contractor's employees are prohibited from smoking in all areas except in areas designated for smoking.

1.22. **EXAMINATION OF PREMISES.** Contractor shall be held to have examined all properties at which the work will take place and to be familiar with the conditions under which the work will be accomplished.

1.23. **CONTAINERS.** No fuels, chemicals or other type of hazardous material shall be stored on any TFC property. All fuels and other chemicals shall be stored in an Occupational Safety and Health Administration (OSHA) approved container. Low Emissions Gas Cans shall be a non-permeable, spill-proof gasoline container.

II. TERM.

2.01. **CONTRACT AWARD.** (a) This Contract shall be effective as of September 1, 2017 and shall expire on August 31, 2019, unless extended by the parties by amendment to this Contract or terminated earlier, as provided in Section 2.03 set forth below.

(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.

2.02. **WORKING HOURS.** Work shall be performed during the week between the hours of 7:00AM to 7:00PM. Work may also be performed at hours other than those listed above, at no additional charge, at the direction of the Contract Administrator, in order to meet required schedules.

2.03. **TERMINATION.** (a) Termination with Default. TFC may terminate this Contract immediately for default by providing written notice to Contractor of such termination if the 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 (the "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 Section 2.03(c) below.

(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 the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary as determined by TFC's Contract Administrator to preserve the work in progress and to protect materials, properties, and equipment. In the event of termination by TFC; TFC shall pay Contractor for all work satisfactorily performed up to the effective date of termination or reduction in the scope of work in accordance with the prices included in the scope of work.

(d) Termination by Contractor. Contractor may terminate the Contract upon providing sixty (60) 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 from the termination of this Contract.

2.04. **UNSATISFACTORY PERFORMANCE.** (a) 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 allotted schedules, 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 shall be considered nonperformance of services and may result in informal corrective actions, formal corrective action plans, withholding of payment, removal of a building(s) and/or termination of this Contract.

(b) TFC may consider the following levels of performance by Contractor as unsatisfactory. An unsatisfactory performance determination includes, but is not limited to the following:

(i) repeated poor or unacceptable performance of work;

(ii) theft, abusive language or behavior, or improper attire on behalf of Contractor's employees;

(iii) not providing the minimum required equipment, tools, supplies, materials, and chemicals to employees as set forth in this Contract; and

(iv) not correcting deficiencies forwarded by the Contract Administrator within forty eight (48) hours.

2.05. **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 ("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.

(b) 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 Plan.

(c) 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 one or more of the following remedies at TFC's sole discretion:

(i) TFC's removal of one (1) or more State-owned properties from the scope of this Contract; and/or

(ii) TFC's termination of this Contract.

(d) In addition, if Contractor is required to deliver and perform under more than one (1) Corrective Action Plan within any period of twelve 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 (1) or more of the following remedies at TFC's sole discretion:

(i) TFC's removal of one or more State-owned properties from the scope of this Contract;

(ii) TFC's imposition of liquidated damages on Contractor in an amount equal to ten percent (10%) of the amount of compensation otherwise payable by TFC to Contractor under this Contract for work invoiced during the three (3) month period preceding the date the most recently submitted Corrective Action Plan was approved by the Contract Administrator; and/or

(iii) TFC's termination of this Contract.

2.06. **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. **CONTRACT LIMIT AND FEES AND EXPENSES.** (a) The total amount of this Contract shall not exceed the sum of Four Hundred Ninety Five Thousand Four Hundred Seventy and 82/100 Dollars ($495,470.82). This amount includes the Fiscal Year 2018 – 2019 Contract base fee of Four Hundred Seventy Five Thousand Four Hundred Seventy and 82/100 Dollars ($475,470.82) and Twenty Thousand and No/100 Dollars ($20,000.00) to cover any Additional Services, as defined in Section 3.03 below. Pricing fees shall be invoiced in accordance with Exhibit A – Property List, Compensation and Fees, attached hereto and incorporated herein for all purposes. Any changes to the not-to-exceed amount of the Contract or pricing fees set forth in Exhibit A – Property List, Compensation and Fees shall be submitted to TFC for review and shall be approved by amendment to this Contract.

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

3.02. **PAYMENTS TO CONTRACTOR.** (a) Invoices from the Contractor will be submitted on a monthly basis, and paid within thirty (30) days from receipt of a correct invoice or billing statement in accordance with the Texas Government Code, Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by TFC. Contractor will be paid for completion of work accepted and approved by TFC's Contract Administrator. For large projects, partial payment may be allowed once per month on completed work with acceptance and approval of TFC's Contract Administrator.

(b) Contractor shall invoice TFC for work performed by vendor identification number, building, and purchase order number. Invoices must include the purchase order number, the number of employees that worked on the job, the number of hours, and a copy of the project service ticket. Additionally, invoices for any materials purchased for each project must be provided. Address for submission is: Texas Facilities Commission, Accounts Payable, P.O. Box 13047, Austin, Texas 78711-3047.

3.03. **ADDITIONAL SERVICES AND ADJUSTMENTS.** (a) "Additional Services" are those services not included in Article I of this Contract which may be requested by TFC at any time for the duration of this Contract. Upon request by TFC for Additional Services, Contractor shall prepare and submit to TFC a proposal for such services requested. Additional Services will be charged at the hourly rate set forth in Exhibit A – Property List, Compensation and Fees and shall be documented by Delivery Release to this Contract.

(b) Additional Services may also include the addition of properties for which no unit price was included in Exhibit A – Property List, Compensation and Fees, and may be added to this Contract provided TFC and Contractor agree to a unit price. Prices for any additional properties shall be calculated by comparing such properties to similar properties included in Exhibit A – Property List, Compensation and Fees. The addition of properties shall be documented by amendment to this Contract.

(c) At any time, TFC may adjust the Contract, in whole or in part, with thirty (30) days' notice to Contractor. Adjustments shall be in accordance with the unit prices quoted in Exhibit A – Property List, Compensation and Fees and shall be documented by amendment to this Contract.

IV. CONTRACTOR PERSONNEL.

4.01. **REQUIRED QUALIFICATIONS.** At all times during the term of the Contract, Contractor shall have available, under direct employment and supervision, the necessary qualified personnel, organization and facility to properly fulfill all the terms and conditions of this Contract. All employees of Contractor shall be no less than seventeen (17) years of age.

4.02. **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 conviction.

(b) Contractor's employees and subcontractors that will complete any work on-site at a state-owned property shall be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by Contractor. If requested by TFC, a complete criminal background check shall be completed before any employee performs services at the site, 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 C - Criminal Background Checks and Application Guidelines, attached hereto and incorporated herein for all purposes.

4.03. **REMOVAL OF PERSONNEL.** TFC may request that the Contractor replace unsatisfactory personnel, which request shall not be unreasonably denied.

4.04. **ABSENTEEISM AND VACATION.** Contractor shall provide substitutes for any employees not present for work. Contractor shall provide relief personnel or overtime personnel, as necessary, at no cost to TFC to ensure that the provisions of this Contract are performed.

4.05 **INDEPENDENT CONTRACTOR.** It is understood and agreed by TFC and Contractor that Contractor is retained as an independent contractor and in no event shall any employee hired by Contractor be considered an employee of TFC.

4.06. **TRAINING.** (a) Contractor shall have an ongoing training program to provide each employee used in the performance of work under this Contract with adequate training to perform the work competently as defined in the scope of work. Contractor must agree to modify the program if requested by TFC. The training program shall remain the sole and exclusive property of Contractor.

4.07. **QUARTERLY EMPLOYEE REPORT.** Within five (5) working days of the end of each State fiscal year quarter (November, February, May, and August), Contractor shall provide to the Contract Administrator, a report of the number of full-time and part-time employees employed as of the last working day of the State fiscal year quarter.

4.08 **CONTRACTOR COOPERATION.** Contractor agrees to cooperate and coordinate its work with that of other contractors retained by TFC. Upon discovery of an apparent conflict in the sequencing of work with another contractor, Contractor shall report the concern to TFC's Contract Administrator who will resolve the conflict.

4.09 **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 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, 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.**

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.

6.01. **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.

6.02. **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.

6.03. **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.

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

VII. CONTRACTOR RESPONSIBILITIES AND WARRANTIES.

7.01. **CONTRACTOR RESPONSIBILITIES.** Contractor shall be responsible for damage to TFC's grounds, shrubs, buildings and/or parked vehicles, by its works, its negligence in work, its personnel, or its equipment by Contractor's staff or subcontractors. Contractor shall be responsible and liable for the safety, injury, and health of its working personnel while its employees are performing work for TFC.

7.02. **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 and rules relating to landscaping and pest control, parking and rights-of-way within properties.

7.03. **LICENSES.** At all times, Contractor shall maintain a current lawn and ornamental commercial pest license as required by the Texas Department of Agriculture and current irrigator licenses as required for commercial irrigation maintenance, repair and installation as required by the Texas Commission on Environmental Quality.

7.04. **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.

7.05 **NO LITIGATION WARRANTY.** Contractor represents and warrants that it is not a party to or otherwise substantively involved in any matter involving litigation, or any administrative or regulatory proceeding, which, if decided adversely to Contractor's interests, could be reasonably expected to adversely affect Contractor's ability to fully and timely 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.

VIII. INSURANCE, INDEMNIFICATION AND LEGAL OBLIGATIONS.

8.01. **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 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 $250,000.00 bodily injury per accident, $500,000.00 bodily injury disease policy limit and $250,000.00 per disease, per employee. Workers' compensation insurance coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(44). 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 $500,000.00 per occurrence for coverage AB&C including products/completed operations, where appropriate, with a separate aggregate of $1,000,000.00. 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 $500,000.00 per occurrence for bodily injury and property damage. Alternate acceptable limits are $250,000.00 bodily injury per person, $500,000.00 bodily injury per occurrence and at least $100,000.00 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.

8.02. **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.

(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).

(ii) That obligates the insurance company to notify the 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.

(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.

8.03. **INDEMNIFICATION.** **CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS TFC AND THE STATE OF TEXAS, THEIR AGENTS AND EMPLOYEES, FROM ALL LIABILITY AND DAMAGES FOR ANY AND ALL INJURIES OR DAMAGES SUSTAINED BY ANY PERSON OR PROPERTY TO THE EXTENT CAUSED BY ANY NEGLIGENCE IN THE PERFORMANCE OF THE SERVICES REFERENCED HEREIN AND FROM ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER BOTH FEDERAL AND STATE WORKERS COMPENSATION LAWS, TEXAS TORT CLAIMS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE, CHAPTER 101), OR ANY OTHER SUCH LAWS. CONTRACTOR SHALL FURTHER SO INDEMNIFY AND BE RESPONSIBLE FOR ALL DAMAGES OR INJURY TO PROPERTY OF ANY CHARACTER TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT, OMISSION OR MISCONDUCT OF CONTRACTOR, CONTRACTOR'S AGENTS OR EMPLOYEES, IN THE MANNER OR METHOD OF EXECUTION OF THE SERVICES HEREIN TO BE PERFORMED; OR FROM FAILURE TO PROPERLY PERFORM THE SERVICES TO THE REQUIRED STANDARD STATED HEREIN; OR FROM DEFECTIVE WORK OR MATERIALS; OR FROM BREACH OF ANY REPRESENTATION OR WARRANTY HEREIN. THESE REQUIREMENTS SHALL SURVIVE THE TERM OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO TFC.**

8.04. **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.

9.01. **FINANCIAL INTERESTS/GIFTS.** 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.

9.02. **PRIOR EMPLOYMENT.** Pursuant to Texas Government Code Chapter 573 and Section 2254.032, 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. 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.

9.03. **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.

9.04. **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.

9.05. **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.

9.06. **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.

9.07 **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.

9.08. **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.

9.09. **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, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees 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 its contractors and subcontractors. Contractor shall not place any employee of Contractor at a worksite, nor shall Contractor permit any employees, nor any employee of its subcontractor to perform any work on behalf of, or for the benefit of, TFC without first ensuring said employee's authorization to lawfully work in the United States.

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 (on the Department's Standard Wage Rate Affidavit Form) with its billing documents affirming that all employees have been paid not less than the current "Federal Minimum Wage".

9.15. **PROHIBITION AGAINST BOYCOTTING ISRAEL.** In accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

X. MISCELLANEOUS PROVISIONS.

10.01. **ASSIGNMENT AND SUBCONTRACTS.** (.) 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 D – 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.

(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.

10.02. **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 D – 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 D-1 – HSP Progress Assessment Report, attached hereto and incorporated herein for all purposes. PARs shall be submitted monthly with each invoice and are a condition of payment.

10.03. **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.

10.04. **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.

10.05. **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" (*https://app.buyaccessible.gov/baw/Main.jsp*). 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/*.

10.06. **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, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed 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 or 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.

10.07. **DRUG FREE WORK PLACE.** Contractor, Contractor's employees and Subcontractors shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law No. 100-690, Title V, Subtitle D; 41 U.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.

10.08. **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.

10.09. **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 the TFC or Contractor, as the case may be, at the address set forth below:

For TFC:
Texas Facilities Commission
1711 San Jacinto Blvd., Room 400
Austin, Texas 78701
Attention: Legal Services Division
Phone: (512) 475-2400
Fax: (512) 236-6171

For Contractor:
Maldonado Nursery & Landscaping, Inc.
9800 Brown Lane
Austin, TX 78754
Attn: Martin Salazar
Phone: (210) 599-1219
Email: martins@mnlsa.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. **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.**

10.11. **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.

10.12. **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.

10.13. **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.

10.14. **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.

10.15. **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.

10.16. **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.

10.17. **NO WAIVER.** Nothing in this Contract shall be construed as a waiver of the State of Texas's sovereign immunity. 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 estoppels. 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.

10.18. **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.

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

TEXAS FACILITIES COMMISSION	**MALDONADO NURSERY & LANDSCAPING**
Sign:	Sign:
Harvey Hilderbran	Name: Daniel Hirsch
Executive Director	Title: Division Manager
Date: 8-11-17	Date: 8/7/17

G.C.

Dir.

D.E.D.

EXHIBIT A

TFC CONTRACT NO. 18-035-000

PROPERTY LIST, COMPENSATION AND FEES

TFC CONTRACT NO. 18-035-000
RFP NO. 303-5-01728

EXHIBIT A

Company Name: Maldonado Nursery and Landscaping, Inc.

Exibit A - PROPERTY LIST, COMPENSATION AND FEES
RFP 303-5-01728, Grounds Maintenance, Austin, TX

Item	Facility	Description	Quantity	Unit of Measure	Unit Price	Total Extended Price
	Group I					
1	John H. Winters Complex (JHW) 701 West 51st Street Austin, Texas 78751	Grounds maintenance - (44 x yr)	88	Visits	324.77	28,579.76
		Turf areation (1 x yr)	2	Visits	366.90	733.80
		Fertilization (2 x yr)	4	Visits	66.94	267.76
		Mulch (2 x yr)	4	Visits	185.38	741.52
2	Brown Heatly Building (BHB) 4900 North Lamar Austin, Texas 78751	Grounds maintenance - (44 x yr)	88	Visits	128.19	11,280.72
		Turf areation (1 x yr)	2	Visits	74.15	148.30
		Fertilization (2 x yr)	4	Visits	15.45	61.80
		Mulch (2 x yr)	4	Visits	185.38	741.52
		Irrigation (12 x yr)	24	Visits	139.04	3,336.96
3	Human Services Warehouse (HSW) 1111 North Loop Austin, Texas 78756	Grounds maintenance - (44 x yr)	88	Visits	85.46	7,520.48
		Turf areation (1 x yr)	2	Visits	74.15	148.30
		Fertilization (2 x yr)	4	Visits	10.30	41.20
		Mulch (2 x yr)	4	Visits	92.69	370.76
		Irrigation (12 x yr)	24	Visits	82.39	1,977.36
4	Dept. of Assistive & Rehabilitative Ser.(DARS) 4800 N. Lamar Austin, Texas 78751	Grounds maintenance - (44 x yr)	88	Visits	341.85	30,082.80
		Turf areation (1 x yr)	2	Visits	195.68	391.36
		Fertilization (2 x yr)	4	Visits	36.05	144.20
		Mulch (2 x yr)	4	Visits	370.76	1,483.04
		Irrigation (12 x yr)	24	Visits	56.64	1,359.36
5	Disaster Recovery Operations (DROC) 1001 W. North Loop Blvd. Austin, Texas 78756	Grounds maintenance - (44 x yr)	88	Visits	64.09	5,639.92
		Turf areation (1 x yr)	2	Visits	73.38	146.76
		Fertilization (2 x yr)	4	Visits	7.72	30.88
		Mulch (2 x yr)	4	Visits	148.31	593.24
		Irrigation (12 x yr)	24	Visits	82.39	1,977.36
6	Bolm Rd. Warehouse (WHB) 6506 Bolm Rd. Austin, Texas 78721	Grounds maintenance - (18 x yr)	36	Visits	85.45	3,076.20
		Fertilization (2 x yr)	4	Visits	5.15	20.60
		Mulch (1 x yr)	2	Visits	74.15	148.30
7	Texas Department of Public Safety (DPS) 1500 N. Congress Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	64.09	5,639.92
		Turf areation (1 x yr)	2	Visits	97.84	195.68
		Fertilization (2 x yr)	4	Visits	5.15	20.60
		Mulch (2 x yr)	4	Visits	74.15	296.60
		Irrigation (12 x yr)	24	Visits	72.09	1,730.16

Company Name: Maldonado Nursery and Landscaping, Inc.

Exibit A - PROPERTY LIST, COMPENSATION AND FEES
RFP 303-5-01728, Grounds Maintenance, Austin, TX

Item	Facility	Description	Quantity	Unit of Measure	Unit Price	Total Extended Price
8	Central Services Building (CSB) 1711 San Jacinto Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	85.46	7,520.48
		Turf areation (1 x yr)	2	Visits	73.38	146.76
		Fertilization (2 x yr)	4	Visits	5.15	20.60
		Mulch (2 x yr)	4	Visits	185.38	741.52
		Irrigation (12 x yr)	24	Visits	33.47	803.28
9	Lyndon B. Johnson Building (LBJ) 111 E. 17th Street Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	106.83	9,401.04
		Turf areation (1 x yr)	2	Visits	121.53	243.06
		Fertilization (2 x yr)	4	Visits	20.60	82.40
		Mulch (2 x yr)	4	Visits	185.38	741.52
		Irrigation (12 x yr)	24	Visits	56.64	1,359.36
10	William B. Travis Building (WBT) 1701 N. Congress Avenue Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	128.19	11,280.72
		Turf areation (1 x yr)	2	Visits	147.28	294.56
		Fertilization (2 x yr)	4	Visits	20.60	82.40
		Mulch (2 x yr)	4	Visits	278.07	1,112.28
		Irrigation (12 x yr)	24	Visits	102.99	2,471.76
11	Stephen F. Austin Building (SFA) 1701 N. Congress Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	149.56	13,161.28
		Turf areation (1 x yr)	2	Visits	147.28	294.56
		Fertilization (2 x yr)	4	Visits	20.60	82.40
		Mulch (2 x yr)	4	Visits	185.38	741.52
		Irrigation (12 x yr)	24	Visits	70.03	1,680.72
12	John H. Reagan Building (JHR) 105 W. 15th Street Austin, Tx 78701	Grounds maintenance - (44 x yr)	88	Visits	64.10	5,640.80
		Turf areation (1 x yr)	2	Visits	147.28	294.56
		Fertilization (2 x yr)	4	Visits	10.30	41.20
		Mulch (2 x yr)	4	Visits	92.69	370.76
		Irrigation (12 x yr)	24	Visits	46.35	1,112.40

Company Name: Maldonado Nursery and Landscaping, Inc.

Exibit A - PROPERTY LIST, COMPENSATION AND FEES
RFP 303-5-01728, Grounds Maintenance, Austin, TX

Item	Facility	Description		Quantity	Unit of Measure	Unit Price	Total Extended Price
13	Price Daniel Building (PDB) 209 W. 14th Street Austin, Tx 78701	Grounds maintenance -	(44 x yr)	88	Visits	64.10	5,640.80
		Turf areation	(1 x yr)	2	Visits	48.92	97.84
		Fertilization	(2 x yr)	4	Visits	10.30	41.20
		Mulch	(2 x yr)	4	Visits	129.77	519.08
		Irrigation	(12 x yr)	24	Visits	77.24	1,853.76
14	Tom C. Clark Building (TCC) 205 W. 14th Street Austin, Texas 78701	Grounds maintenance -	(44 x yr)	88	Visits	85.46	7,520.48
		Turf areation	(1 x yr)	2	Visits	74.15	148.30
		Fertilization	(2 x yr)	4	Visits	10.30	41.20
		Mulch	(2 x yr)	4	Visits	92.69	370.76
		Irrigation	(12 x yr)	24	Visits	77.24	1,853.76
15	Supreme Court Building (SCB) 203 W. 14th Street Austin, Texas 78701	Grounds maintenance -	(44 x yr)	88	Visits	64.10	5,640.80
		Turf areation	(1 x yr)	2	Visits	24.72	49.44
		Fertilization	(2 x yr)	4	Visits	10.30	41.20
		Mulch	(2 x yr)	4	Visits	111.23	444.92
		Irrigation	(12 x yr)	24	Visits	82.39	1,977.36
16	Archives and Library (ARC) 1200 Brazos Street Austin, Texas 78701	Grounds maintenance -	(44 x yr)	88	Visits	170.93	15,041.84
		Turf areation	(1 x yr)	2	Visits	147.28	294.56
		Fertilization	(2 x yr)	4	Visits	25.75	103.00
		Mulch	(2 x yr)	4	Visits	185.38	741.52
		Irrigation	(12 x yr)	24	Visits	41.20	988.80
17	Insurance Building (INS) 1100 San Jacinto Austin, Texas 78701	Grounds maintenance -	(44 x yr)	88	Visits	128.19	11,280.72
		Turf areation	(1 x yr)	2	Visits	122.56	245.12
		Fertilization	(2 x yr)	4	Visits	15.45	61.80
		Mulch	(2 x yr)	4	Visits	148.31	593.24
		Irrigation	(12 x yr)	24	Visits	23.69	568.56

Company Name: Maldonado Nursery and Landscaping, Inc.

Exibit A - PROPERTY LIST, COMPENSATION AND FEES
RFP 303-5-01728, Grounds Maintenance, Austin, TX

Item	Facility	Description	Quantity	Unit of Measure	Unit Price	Total Extended Price
18	Sam Houston Building (SHB) 201 E. 14th Street Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	106.85	9,402.80
		Turf areation (1 x yr)	2	Visits	97.84	195.68
		Fertilization (2 x yr)	4	Visits	15.45	61.80
		Mulch (2 x yr)	4	Visits	185.38	741.52
		Irrigation (12 x yr)	24	Visits	51.50	1,236.00
19	Parking Lot 3 (PK3) 111 W. 17th Street Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	42.73	3,760.24
		Fertilization (2 x yr)	4	Visits	6.44	25.76
20	Parking Garage E (PKE) 1604 Colorado Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	64.10	5,640.80
		Turf areation (1 x yr)	2	Visits	49.44	98.88
		Fertilization (2 x yr)	4	Visits	5.15	20.60
		Mulch (2 x yr)	4	Visits	55.61	222.44
		Irrigation (12 x yr)	24	Visits	46.35	1,112.40
21	Parking Lot 19 (PK19) 203 MLK Blvd. Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	64.10	5,640.80
		Fertilization (2 x yr)	4	Visits	5.15	20.60
22	DSHS - Dr. Bob Glaze Lab (DHNL) 1100 W. 49th Street Austin, Texas 78701	Grounds maintenance - (26 x yr)	52	Visits	64.09	3,332.68
23	DSHS - Campus (excluding Lab Bldg) (DSHS) 1100 W. 49th Street Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	431.71	37,990.48
		Turf areation (1 x yr)	2	Visits	195.68	391.36
		Fertilization (2 x yr)	4	Visits	30.90	123.60
		Mulch (2 x yr)	4	Visits	308.97	1,235.88
		Irrigation (12 x yr)	24	Visits	242.03	5,808.72

Company Name: Maldonado Nursery and Landscaping, Inc.

Exibit A - PROPERTY LIST, COMPENSATION AND FEES
RFP 303-5-01728, Grounds Maintenance, Austin, TX

Item	Facility	Description	Quantity	Unit of Measure	Unit Price	Total Extended Price
24	Texas School for the Blind & Visually Impaired(TSBVI) 1100 West 45th Street Austin, Texas 78756	Irrigation - only (6 x yr)	12	Visits	669.44	8,033.28
25	Texas School for the Deaf (TSD) 1102 South Congress Avenue Austin, Texas 78704	Irrigaiton - only (6 x yr)	12	Visits	669.44	8,033.28
				TOTAL	11,550.65	317,938.82

Hourly Rates	Pricing
Hourly rates for additional service requests as needed.	
Licensed Irrigator & (1) Laborer Team	Hr: $ 90.00
Landscape Foreman	Hr: $ 25.00
Landscape Laborer	Hr: $ 25.00
Landscape Design Services	Hr: $ 85.00
Licensed Landscape Architect	Hr: $ 120.00
Material Markup:	Contractor shall invoice at MSRP/List*** price minus .15 percent

Materials purchased at local retail outlets by Contractor field staff. Contractor shall invoice at cost (sales receipt/invoiced price).

***MSRP/List - TFC reserves the right to request from awarded vendor any published or printed catalog that reflects MSRP/List price for verification purposes.

EXHIBIT A
PROPERTY LIST, COMPENSATION AND FEES

Item	Facility	Description	Quantity	Unit of Measure	Unit Price	Per Year Price	Total Extended Price
1	Robert E. Johnson (REJ) & Parking Garage P (PKP) 1501 North Congress Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	232.0000	10,208.00	20,416.00
		Fertilization (2 x yr)	4	Visits	250.0000	500.00	1,000.00
		Mulch (2 x yr)	2	Visits	780.0000	1,560.00	3,120.00
		Turf areation (2 x yr)	2	Visits	325.0000	650.00	1,300.00
		Irrigation (12 x yr)	24	Visits	95.0000	1,140.00	2,280.00
2	William P. Clements (WPC) & Parking Garage J (PKJ) 300 West 15th Street Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	87.0000	3,828.00	7,656.00
		Fertilization (2 x yr)	4	Visits	50.0000	100.00	200.00
		Mulch (2 x yr)	2	Visits	325.0000	650.00	1,300.00
		Irrigation (12 x yr)	24	Visits	65.0000	780.00	1,560.00
3	Parking Lot 8 (PK8) 1507 Lavaca Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	87.0000	3,828.00	7,656.00
4	Parking Lot 11 (PK11) 1500 North Congress Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	101.0000	4,444.00	8,888.00
5	Parking Lot 12 (PK12) 1801 San Jacinto Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	87.0000	3,828.00	7,656.00
6	Parking Garage B (PKB) 1511 San Jacinto Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	87.0000	3,828.00	7,656.00
7	Parking Garage G (PKG) 315 E. 17th Street Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	87.0000	3,828.00	7,656.00
8	State Records Center (SRC) 4400 Shoal Creek Blvd. Austin, Texas 78756	Grounds maintenance - (44 x yr)	88	Visits	$ 464.00	20,416.00	40,832.00
		Mulch (2 x yr)	4	Visits	$ 1,300.00	2,600.00	5,200.00
9	Central Services Annex, (CSX), Parking Lot 18,(PK18) 311 East 14th Street Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	65.0000	2,860.00	5,720.00
		Mulch (2 x yr)	4	Visits	325.0000	650.00	1,300.00
		Irrigation (12 x yr)	24	Visits	65.0000	780.00	1,560.00
10	Parking Gargage F, (PKF) 1311 San Jacinto Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	65.0000	2,860.00	5,720.00
		Mulch (1 x yr)	2	Visits	325.0000	650.00	1,300.00
		Irrigation (12 x yr)	24	Visits	65.0000	780.00	1,560.00
11	Parking Garage A, (PKA) 1401 San Jacinto Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	65.0000	2,860.00	5,720.00
						0.00	0.00
						0.00	0.00
	Parking Lot 25, (PK25)	Grounds maintenance - (44 x yr)	88	Visits	87.0000	3,828.00	7,656.00

EXHIBIT A
PROPERTY LIST, COMPENSATION AND FEES

Item	Facility	Description	Quantity	Unit of Measure	Unit Price	Per Year Price	Total Extended Price
12	1111 Colorado Austin, Texas 78701	Mulch (1 x yr)	2	Visits	325.0000	650.00	1,300.00
13	William P. Hobby Building, (WPH) 333 Guadalupe St. Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	95.0000	4,180.00	8,360.00
		Mulch (2 x yr)	4	Visits	325.0000	650.00	1,300.00
		Irrigation (12 x yr)	24	Visits	65.0000	780.00	1,560.00
14	Parking Garage N, (PKN) 300 San Antonio Austin, Texas 78701	Grounds maintenance - (44 x yr)	88	Visits	87.0000	3,828.00	7,656.00
		Mulch (2 x yr)	4	Visits	325.0000	650.00	1,300.00
		Irrigation (12 x yr)	24	Visits	65.0000	780.00	1,560.00
				TOTAL		78,766.0000	157,532.0000

	Hourly Rates	Pricing
Hourly rates for additional service requests as needed:		
	Licensed Irrigator & (1) Laborer Team	Hr: $_____90.00_____
	Landscape Foreman	Hr: $_____25.00_____
	Landscape Laborer	Hr: $_____25.00_____
	Landscape Design Services	Hr: $_____85.00_____
	Licensed Landscape Architect	Hr: $_____120.00_____
	Material Markup: Contractor shall invoice at:	MSRP/List Price**** plus _____15_____%
	For materials purchased at local retail outlets by Contractor field staff, Contractor shall invoice at cost (sales receipt/invoiced price).	

***MSRP/List - TFC reserves the right to request from awarded vendor any published or printed catalog that reflects MSRP/List price for verification purposes.

EXHIBIT A-1

TFC CONTRACT NO. 18-035-000

IRRIGATION SYSTEMS

IRRIGATION SYSTEMS
RFP 303-5-01728 Grounds Maintenance, Austin, TX

Item	Facility	Clock Model and Make # Zones	Location Description
1	Robert E. Johnson (REJ) & Parking Garage P (PKP) 1501 North Congress Austin, Texas 78701	Irrigation System	Hunter ICC controller with (17) zones.
2	William P. Clements (WPC) & Parking Garage J (PKJ) 300 West 15th Street Austin, Texas 78701	Irrigation System	Rainbird ESP-LX Plus controller with (7) zones.
3	Parking Lot 8 (PK8) 1507 Lavaca Austin, Texas 78701	Irrigation System	Manual valve system
4	Parking Lot 11 (PK11) 1500 North Congress Austin, Texas 78701	Irrigation System	Manual valve system
5	Parking Lot 12 (PK12) 1801 San Jacinto Austin, Texas 78701	No Irrigation System	
6	Parking Lot B (PKB) 1511 San Jacinto Austin, Texas 78701	No Irrigation System	
7	Parking Lot G (PKG) 315 E. 17th Street Austin, Texas 78701	Irrigation System	Manual valve irrigation system
8	State Records Center (SRC) 4400 Shoal Creek Blvd. Austin, Texas 78756	No Irrigation System	

IRRIGATION SYSTEMS
RFP 303-5-01728 Grounds Maintenance, Austin, TX

Item	Facility	Clock Model and Make # Zones	Location Description
9	Central Services Annex, (CSX), Parking Lot 18,(PK18) 311 East 14th Street Austin, Texas 78701	Irrigation System	Two Battery operated controllers (3) zones
10	Parking Gargage F, (PKF) 1311 San Jacinto Austin, Texas 78701	Irrigation System	Rainbird controller with (6) zones (1) Battery operated controller with one zone on west side.
11	Parking Lot 25, (PK25) 1111 Colorado Austin, Texas 78701	Irrigation System	Manual valve system
12	Parking Lot 25, (PK25) 1111 Colorado Austin, Texas 78701	Irrigation System	Manual valve system
13	William P. Hobby Building, (WPH) 333 Guadalupe St. Austin, Texas 78701	Irrigation System	RainBird ESP Controller (8) zones
14	Parking Garage N, (PKN) 300 San Antonio Austin, Texas 78701	Irrigation System	Rainbird ESP-4, Controller (4) zones

EXHIBIT B

TFC CONTRACT NO. 18-035-000

SERVICE REPORT

Service Report

Week of: _____

Property Name: _____ Walk-thru date: _____

Service Provider: _____ Name: _____

Grounds Maintenance Service

Turf

Beds

Requested Services:

Notes

EXHIBIT C

TFC CONTRACT NO. 18-035-000

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.

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 began 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:

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: 512-848-3111
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

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. MorhphoTrust 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.l1enrollment.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.

ATTACHMENT B

IdentoGO
By MorphoTrust USA

Texas Fingerprint Service Code Form

Facilities Commission

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 D

TFC CONTRACT NO. 18-035-000

HUB SUBCONTRACTING PLAN

Rev. 2/17

HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

➤ **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
- ☐ Section 2 c. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a *continuous contract** in place for more than five (5) years *meets or exceeds* the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a *continuous contract** in place for more than five (5) years *does not meet or exceed* the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - No
- ☐ Section 4 - Affirmation
- ☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
- ☐ Section 3 - Self Performing Justification
- ☐ Section 4 - Affirmation

***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 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.*

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HUB Subcontracting Plan (HSP)

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) §20.284 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 §20.285(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.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

a. Respondent (Company) Name: _____ State of Texas VID #: _____

Point of Contact: _____ Phone #: _____

E-mail Address: _____ Fax #: _____

b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No

c. Requisition #: _____ Bid Open Date: _____ (mm/dd/yyyy)

•Enter your company's name here: _____ Requisition #: _____

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 and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, 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 and services. (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		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php).

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 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: _____ Requisition #: _____

SECTION 2: RESPONDENT's SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing 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.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

***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 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: _____ Requisition #: _____

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.

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 https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.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.

Signature	Printed Name	Title	Date (mm/dd/yyyy)

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.

HSP Good Faith Effort - Method A (Attachment A)

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Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "*Yes*" to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number:_____ Description: _____

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN Do not enter Social Security Numbers If you do not know their VID / EIN leave their VID / EIN field blank	Approximate Dollar Amount	Expected Percentage of Contract
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. 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.

HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "***No***" to **SECTION 2, Items c** and **d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - Yes (If *Yes*, continue to SECTION B-4.)

☐ - No / Not Applicable (If *No* or *Not Applicable*, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you MUST comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "**A**" signifies that the company is a Texas certified HUB.

b. List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			☐ - Yes ☐ - No
			☐ - Yes ☐ - No
			☐ - Yes ☐ - No

c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php.

d. List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		☐ - Yes ☐ - No
		☐ - Yes ☐ - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b,** of the completed HSP form for which you are completing the attachment.

a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "**A**" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN Do not enter Social Security Numbers If you do not know their VID / EIN, leave their VID / EIN field blank	Approximate Dollar Amount	Expected Percentage of Contract
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%

c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. 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 it (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.

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HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of $100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____ **State of Texas VID #:** _____

Point-of-Contact: _____ **Phone #:** _____

E-mail Address: _____ **Fax #:** _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____ **Phone #:** _____

Requisition #: _____ **Bid Open Date:** _____ (mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ (Central Time) **on** _____ (Date (mm/dd/yyyy)).

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications: ☐ - Not Applicable

4. Bonding/Insurance Requirements: ☐ - Not Applicable

5. Location to review plans/specifications: ☐ - Not Applicable

EXHIBIT D-1

TFC CONTRACT NO. 18-035-000

HSP PROGRESS ASSESSMENT REPORT

HUB Subcontracting Plan (HSP)
Prime Contractor Progress Assessment Report

Rev. 10/16

This form must be completed and submitted to the contracting agency each month to document compliance with your HSP.

Contract/Requisition Number: _____ Date of Award: _____ Object Code: _____

Contracting Agency/University Name: _____

Contractor (Company) Name: _____ State of Texas VID #: _____

Point of Contact: _____ Phone #: _____

Reporting (Month) Period: _____ Total Amount Paid this Reporting Period to Contractor: $ -

Report HUB and Non-HUB subcontractor information

When verifying subcontractors' HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized (HUB) Directory Search located at: http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.

Subcontractor's Name	Texas certified HUB (Yes or No)	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Total Contract $ Amount from HSP with Subcontractor	Total $ Amount Paid this Reporting Period to Subcontractor	Total Contract $ Amount Paid to Date to Subcontractor	Object Code (Agency Use Only)
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Signature: _____ Title: _____ Date: _____