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SERVICES CONTRACT
FOR
INTEGRATED PEST MANAGEMENT SERVICES

BETWEEN

THE TEXAS FACILITIES COMMISSION

AND

PEST MANAGEMENT, INC.

TFC CONTRACT NO. 20-017-000

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The Texas Facilities Commission (hereinafter referred to as "Owner," as defined below, or "TFC"), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 and Pest Management, Inc., (hereinafter referred to as "Contractor"), located at 1807 West Slaughter Lane, Austin, Texas 78748, enter into the following contract for the provision of integrated pest management services for various state-owned buildings (hereinafter referred to as the "Contract") pursuant to Tex. Gov't Code Sections 2156.121 and 2165.001.

I. STATEMENT OF WORK.

1.01. **GENERAL.** (a) Contractor shall provide, or cause to be provided, Integrated Pest Management structural pest control services for Group 1, Group 2, and Group 3, as described in Exhibit A – TFC Building List, attached hereto and incorporated herein for all purposes.

(b) Contractor shall furnish all supervision, labor, materials and equipment necessary to evaluate, monitor and complete the pest control services as per the Contract.

(c) Contractor shall complete a property-wide inspection and assessment using visual inspections and, as needed, inspection monitoring devices.

(d) Contractor shall design an Integrated Pest Management (hereinafter referred to as "IPM") Plan (hereinafter referred to as the "Plan").

(e) Using accepted pest management strategies, Contractor shall control structural pests to include, but not be limited to: indoor populations of rodents, insects, arachnids, and other arthropod pests not specifically excluded from the contract. These include ants, crazy ants, cockroaches, spiders, scorpions, millipedes, fleas, ticks, pill bugs, earwigs, crickets, yellow jackets and other wasps, rodent trapping (interior only), and other arthropod pests not specifically excluded from the contract. Proper pickup and timely disposal of dead vertebrates is also included in the Scope of this Contract.

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(f) Pests Excluded from This Contract. Carpenter ants, termites, bed bugs, brown recluse or black widow spiders, wildlife control, snakes, bats, birds, and bees. Management of pests excluded from this Contract may be requested as an Additional Service, as defined in Section 3.03 below. Contractor shall price these services as identified in Exhibit B - Compensation and Fees, attached hereto and incorporated herein for all purposes.

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 referred to as "Contract Administrator") are to be strictly and promptly followed by Contractor at all times. The Contract Administrator is to have free access to Contractor's supplies, equipment, and work product at all times for inspection and audit. Contractor is to afford the Contract Administrator all necessary assistance during those inspections and/or audits. The Contract Administrator will decide any and all questions that may arise as to the quality and acceptability of work performed, and as to the manner of performance and rate of progress of the work. The Contract Administrator will determine the amount of work performed and materials furnished which are to be paid under this Contract. Failure of the Contract Administrator during the progress of the Contract, to: (i) discover or reject unacceptable work; (ii) discover work not in accordance with the Contract; or, (iii) failure to exercise any remedies in connection therewith, shall not be deemed an acceptance thereof, nor a waiver, of TFC's right to full performance of the contract.

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

1.03. **SCHEDULES.** (a) Except as otherwise agreed upon by the Contract Administrator, all work at the Facilities shall be performed between 7:00AM and 6:00PM, Monday through Friday, and shall not interfere with daily operations.

(b) Initial inspection of the Facilities shall be completed within thirty (30) days of the award date. The schedule for the inspection of the Facilities shall be approved by the Contract Administrator.

(c) The Plan shall be submitted within two (2) weeks after the initial inspection.

1.04. **INTEGRATED PEST MANAGEMENT PLAN.** The Plan shall describe the expected schedule and duration of service visits required to meet management objectives, as defined in Section 1.04(a) below. The Plan shall be updated and re-submitted annually based on the routine inspections, as defined in Section 1.05(a) below, performed by Contractor. Submitted Plan shall include, but not be limited to, the following components:

(a) Management Objectives. Describing the expected schedule and duration of service visits required will include, but not be limited to, the following:

(i) identify key pests to be controlled;

(ii) define action thresholds for each level of control;

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(iii) identify areas of the Facilities requiring special attention;

(iv) define low, medium and high levels of infestations; and,

(v) define all guarantees, exclusions, and limitations.

(b) Communication and Accountability Systems. Contractor shall provide the Contract Administrator with the following communication enhancing items:

(i) specific designated contact personnel and alternate(s);

(ii) an established location for the Log Book, as defined in Section 1.06 below, at the Facilities; and

(iii) communication procedures for reporting work orders.

(c) Monitoring Program. Contractor shall describe methods and procedures to be used for:

(i) identifying sites of pest harborage and access, and

(ii) assessing pest populations throughout the term of the Contract. This information must include general locations of common area monitoring traps and responsibilities for routinely checking the traps. Differences in pests associated with seasons and preventive action shall be addressed.

(d) Description of IPM Methods and Products.

(i) Contractor should first strive to use non-chemical control methods such as trapping and pest proofing, followed by chemical controls methods only if non-chemical methods fail. Summarize nonchemical IPM methods proposed and choose pest management strategies that are:

(A) least disruptive of natural controls;

(B) least hazardous to human health;

(C) least toxic to non-target organisms;

(D) least damaging to the environment;

(E) most likely to produce a permanent reduction of the pest population;

(F) easiest to carry out effectively; and

(G) most cost effective.

(ii) Contractor shall not apply pesticides inside or outside unless visual inspection, or a monitoring device, indicates the presence of pests in that specific area.

(iii) Contractor shall control rodents inside buildings only with trapping devices. All such devices shall be concealed from view, being placed in protected areas unaffected by routine cleaning and other operations. Check trapping devices on a schedule approved by the Contract Administrator. Contractor is responsible for disposing of all trapped rodents and all rodent carcasses in an appropriate and timely manner, as required by the Contract Administrator.

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(iv) Contractor shall use portable vacuums rather than pesticide sprays for initial cleanouts of cockroach infestation, for swarming (winged) ants and termites, and for control of spiders in webs.

(v) Contractor shall use bait formulations as the standard pesticide technology, as approved by the Texas Department of Agriculture for cockroach and ant control, with alternate formulations restricted to unique situations where baits are not practical or effective.

(vi) Contractor shall apply all insecticides as "crack and crevice" treatments only, defined in this contract as treatments in which the formulated insecticide is not visible to a bystander during or after the application process.

(vii) Contractor shall list U.S. EPA approved pesticide products proposed for use in the program together with the rationale, proposed methods of use and methods planned to minimize exposure. For each pesticide, Contractor shall list the product name, EPA registration number, pests targeted, and where pesticide will be applied (e.g. indoors, in wall voids, or outside).

(e) Desirable Structural or Operation Changes. Contractor shall identify pest-proofing activities or modification of staff operational methods or timing that would improve pest management efforts.

(f) Record Keeping Systems. Contractor shall collect data and provide on monitoring form approved by Contract Administrator designed to track data on pest location, populations, harborage, trends in pest populations, status of previously suggested pest exclusion and prevention measures for which facility staff are responsible, and other relevant information.

(g) Education and Training Activities. Contractor shall provide recommended education and training activities and materials for facility staff that would increase their support for IPM activities as requested by the Contract Administrator.

1.05. **SERVICE SPECIFICS.** Treatments shall be scaled to the type and level of infestation and priced accordingly.

(a) Routine Inspections. Contractor shall conduct regularly scheduled inspections for pests, establish or collect monitoring traps, and treat facilities for pests as needed. Sticky trap monitors shall be placed in all common areas and checked or replaced at each inspection. Routine inspections are to be scheduled so that Contractor visits each facility at least twice per year.

(i) Follow-up Service. Follow-up services are in response to work orders received or in response to findings during inspections or treatments put in place, such as pests caught in monitoring stations, traps that require emptying or refilling. Follow-up Services are to be at no charge unless Contract Administrator deems work is an emergency service. Contractor shall respond to Follow-up Service requests within a reasonable time as determined by the Contract Administrator.

(b) Callback. For the purpose of evaluating performance under this Contract, a "Callback" is defined as a failure due to a technician's inability, negligence or lack of knowledge to correct a problem.

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(c) Callback Response. Failure by Contractor to successfully complete a treatment session will result in a Callback. The Contract Administrator shall contact Contractor and notify them of a Callback situation. Callbacks are to be at no charge unless the Contract Administrator deems work is an emergency service, as defined in Section 1.05(d) below. Contractor shall respond to Callbacks within forty-eight (48) hours. Contractor shall check in and out with the Contract Administrator before beginning work and shall ensure that the commencement and completion times for the Callback to treat the problem are entered in the Log Book.

(d) Emergency Services. Emergency Services are those services directed at urgent pest problems that must be addressed as soon as practical. They are not callbacks resulting from other routine services provided under the Contract. Contractor shall be on-site and addressing emergency problems within three (3) hours of the service call. Contractor may charge the emergency rate for these services but must notify the Contract Administrator that the emergency rate applies before performing the service. In the event that such services cannot be completed within the above stipulated time frame, Contractor shall immediately notify the Contract Administrator and indicate an anticipated completion date.

(e) Special Services. Special Services are those services that require special skills, training or licensing and may utilize subcontractors for whose work Contractor shall be accountable. A service ticket shall be completed with each service detailing what was found and completed. In addition, Contractor shall provide detailed, site-specific recommendations for structural and procedural modification to aid in pest prevention.

(f) Cafeteria/Food Service Areas. Conduct monthly inspections and perform treatments as necessary in or around cafeteria and/or food service areas:

(i) If necessary, outside bait stations for the control of rats and mice. Bait stations shall meet tamper resistance standards and be properly positioned, anchored in place, locked, and properly labeled in compliance with regulatory requirements. The bait stations shall be installed around the exterior perimeter of the cafeteria/food service area at 50-100-foot intervals, where allowed by local ordinance. Properly maintained mechanical rodent control devices may also be used, where allowed by government regulations. Lids to the bait stations shall be locked with devices supplied by or recommended by the manufacturer. The use of reusable plastic ties or other easily cut or tampered with materials shall not be used. Baits used shall be rodenticide or monitoring (nontoxic) feeding blocks meeting relevant legislation or the appropriate regulatory agency. Service conducted on the monitoring devices shall be in line with levels of rodent activity in the stations. However, all stations shall be inspected and serviced no less than once per month. Each service and the results of the service shall be documented for each station or device and maintained on file.

(ii) Internal pest management measures shall comply with government regulations. Unless prohibited by regulatory requirements, internal control programs shall consist of the use of mechanical traps, extended trigger traps, or glue boards, but shall not include feeding stations of any kind. Internal devices used for routine monitoring purposes should be positioned at 20-40-foot intervals along exterior perimeter walls. In any area where there is a potential for rodent activity, such as raw material storage areas within a facility, rodent control devices should be installed along interior walls. The contractor shall inspect and clean the devices at least once a week.

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(iii) Maps or schematics showing the locations of the rodent control devices shall be maintained and kept current.

(iv) Rodent burrows, rodent runs, and any conditions attracting rodents or other pests both inside and outside the cafeteria/food service area shall be eliminated.

(v) Electric flying insect monitors should be used as needed to identify flying insect entry into the facility. Units shall be installed so insects are not attracted from outside the cafeteria/food service area. Units shall not be placed within 10 feet of exposed product in a preparation or storage area. All units should be listed on the Schedule for cleanout on a weekly schedule during peak insect season. These should be cleaned monthly during off-peak season. Installation and use shall follow all local regulations.

(vi) Birds shall be controlled by exclusion: netting, screening, mechanical traps or avicides, if legal and practical. The use of avicides shall not be permitted inside the cafeteria/food service area.

1.06. **PEST MANAGEMENT LOG BOOK.** Contractor shall be responsible for providing and maintaining a complete and accurate Pest Management Log Book (hereinafter referred to as "Log Book") at each facility/campus that is served under the Contract. Contractor shall update the Log Book at each visit. The Log Book shall contain at a minimum the following items.

(a) A copy of the Plan.

(b) A service schedule for the facility.

(c) A copy of each license or certification required.

(d) A list of pesticides used, including copies of sample labels and material safety data sheets. All pest control products must be registered by the U.S. EPA for commercial and/or residential use and must be applied according to the manufacturer's label instructions and in compliance with all applicable local, state, federal laws and regulations and as required by the Texas Department of Agriculture for structural pest control.

(e) A pest sighting/surveillance data log, which records, in a systematic fashion, the type and number of pests or other indicators of pest population levels revealed by the monitoring program for the site. Examples include date, number, location, pest and rodent species trapped or carcasses removed as well as date, number and locations of new rodent burrows observed.

(f) The location of all pest activity, including the location of all traps, trapping devices, and bait stations on the premises in map format.

(g) Copies of all service tickets for the facility.

1.07. **REPORTING AND RECORD-KEEPING.** Contractor is required to collect and submit the reports detailed below. The Contract Administrator shall review and approve the report formats provided.

(a) Notification of Upcoming Service. Contractor shall provide pesticide use notification signs and preparation instructions for the Contract Administrator to post at least one week in advance of routine inspection and treatments.

(b) Notification of Pesticide Use (At Time of Treatment). If an infestation is found that requires pesticides, Contractor shall leave a form with the on-site manager detailing what product

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was used, where, any precaution that can be taken or reduce risk of exposure, and nonchemical control techniques that can be used to prevent further infestation.

(c) Inspection/Sanitation Report (Service Tickets). Upon completion of each routine inspection or requested treatment at the facility, Contractor shall submit a summary highlighting the trouble areas. Contractor must submit the report in hard-copy format. The hard copy must be signed by the on-site building manager and kept in the Log Book. An individual service ticket must be completed for each facility in which pesticides were applied and identify pesticides used.

(d) Quality Control Summary (Twice per Year). Contractor shall provide a report on the quality control program in place that quantitatively and qualitatively measures the successes and failure of the program twice per year and/or as requested by the Contract Administrator. A report on the findings of quality control shall include recommendations for improvement including, but not be limited to, the following:

(i) brief narrative discussing the findings as they relate to an increase or new infestations by building, or office number, including recommendations for treatment or preventive measures, and

(ii) discussion of any findings of deficiencies due to lack of access, inadequate or improper treatments, or recommendations of change to a more effective chemical.

(e) Updates to the Plan. Contractor shall receive the concurrence of the Contract Administrator prior to implementing any subsequent changes to the approved Plan, including additional or replacement pesticides and on-site service personnel. Contractor shall continue to provide licenses for every Contractor employee who will be performing on-site services before the employee begins work on the facility. Any substitution, addition, or replacement of personnel from those cited in Contractor's original proposal must be submitted to the Contract Administrator for approval.

1.08. **DELIVERY RELEASE SERVICES.** (a) TFC may request Additional Services, as defined in Section 3.03 below, at any time during this Contract. Such requests for Additional Services shall be documented through a separate document (hereinafter referred to as a "Delivery Release"). Each Delivery Release will be 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 Additional Services 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) Travel time to and from a job site is not reimbursable under this Contract. Contractor shall check in and out with the 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. Contractors shall provide the following information on the Service Ticket:

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(i) materials/chemicals applied;

(ii) target organism;

(iii) amount applied;

(iv) Specific area where pesticide was applied;

(v) method of application;

(vi) rate of application or dosage;

(vii) date and time treated;

(viii) applicator's name and signature;

(ix) TFC work order number; and

(x) number of hours worked.

1.09. **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 the 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 the Contract Administrator for access by Contractor.

1.10. **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.

1.11. **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. Contractor employees and subcontractors must always wear either uniforms or appropriate clothing identifying them as employees of the Contractor or subcontractors when working on campus or within facilities. Inappropriate clothing shall not be worn at any time. Appropriate personal protective equipment shall be worn when operating any powered equipment or applying any hazardous chemicals. Contractor personnel must have a TFC supplied identification badge visible when working on campus or within TFC facilities.

1.12. **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. Contractor shall inspect existing conditions prior to commencing work, including elements subject to damage or movement during the performance of services under this Contract.

1.13. **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 the Contract Administrator and subsequently repair or restore all services to the satisfactory approval of the Contract Administrator. Further, Contractor shall engage any additional outside services which may be necessary to facilitate repairs until services are restored.

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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. The 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 the Contract Administrator, Contractor shall have the right to utilize air, water, gas, steam, electricity, and similar items of expense from existing outlets on TFC property.

1.14. **WORKING HOURS.** Contractor shall perform the services set forth in this Contract that shall not interfere with the day to day business operations of TFC facilities between the hours of 7:00 a.m.–6:00 p.m. Monday through Friday. Other contract work may also be performed at hours other than normal business hours, at the direction of the Contract Administrator, in order to meet required schedules. Contractor will be on-call twenty-four (24) hours a day three hundred sixty-five (365) days a year and shall respond to the Contract Administrator, as required in Section 1.02. No overtime will be paid without the prior written approval of the Contract Administrator.

1.15. **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 debris and waste materials associated with this Contract.

1.16. **STORAGE / WASTE REMOVAL.** Contractor will be allowed to temporarily store materials and equipment in performance of this Contract during the project time period only if space is available. Storage space will be arranged through the Contract Administrator. Contractor shall keep premises clean on a continual basis and no trash or debris will be permitted to accumulate in work areas. Use of a dust barrier may be required and will be communicated to Contractor by the Contract Administrator on a per stage basis. Contractor shall be responsible for removal and disposal of all waste packaging material and excess materials purchased by Contractor associated with this project which may include, if applicable, the rental of a waste receptacle. If needed, site placement of the waste receptacle shall be approved by the Contract Administrator. TFC is not responsible for the security of stored materials and equipment. TFC encourages the use of gang boxes for tool storage and securing the site when unoccupied by Contractor. Contractor shall maintain at all times clear access to fire lanes, and emergency and utility control facilities such as fire hydrants, fire alarm boxes, utility valves, manholes, junction boxes, fire extinguishers and emergency exits.

1.17. **SMOKING.** All facilities where work is to be performed are nonsmoking buildings. Contractor employees and subcontractors are prohibited from smoking in all areas except in areas designated for smoking.

1.18. **DISPOSAL OF SALVAGEABLE ITEMS.** The 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 other locations as determined by the Contract Administrator.

1.19. **CHEMICALS.** Contractors and subcontractors shall provide TFC Risk Management and the Contract Administrator a legible Safety Data Sheet (hereinafter referred to as "SDS") for all chemicals to be used or brought onto TFC controlled property for each project. SDSs shall be submitted prior to the start of work.

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II. TERM.

2.01. **CONTRACT AWARD.** (a) This Contract shall be effective as of September 1, 2019 and shall expire on August 31, 2021, unless renewed by the parties by written amendment to this Contract, or terminated earlier, as provided in Section 2.02, below. The Contract may be renewed for one (1) additional two (2) year period from September 1, 2021 through August 31, 2023, provided the renewal is executed prior to the expiration of the current contract term. Any extension or renewal of this Contract shall be subject to the provisions, terms and conditions of this Contract, plus any approved changes.

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

(c) This Contract is contingent upon continued availability of funding. If funds become unavailable through lack of legislative appropriation, legislative budget cuts, amendment(s) of the Appropriations Act(s), state agency consolidations, or any other disruption of current appropriations, relevant provisions of Section 2.02, Termination, shall apply.

2.02. **TERMINATION.**

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

(b) Termination without Default. TFC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice (hereinafter referred to as "Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by TFC under this subsection, Contractor shall be governed by the terms and conditions, and shall perform the acts outlined in the following Section 2.02(c).

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

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acts outlined in Section 2.02(c) above. Contractor will be held responsible for additional cost incurred from the termination of this Contract.

2.03. **UNSATISFACTORY PERFORMANCE.** TFC may consider the following levels of performance by Contractor as unsatisfactory. An unsatisfactory performance determination is not limited to the following:

(a) more than two (2) Callbacks to correct the same problem within thirty (30) calendar days;

(b) more than one (1) instance within one (1) calendar year of Contractor personnel assigned to an authorized Service Call, test or inspection not having the skill, knowledge, license or certification to perform the required service or inspection;

(c) failure to timely complete and document required Service Calls, treatments, and/or inspections;

(d) failure to provide the tools necessary to complete the inspection or required service;

(e) failure by Contractor to respond to an emergency service within the required timeframe;

(f) the incorrect use, unsafe pesticide application or failure to follow proper safety procedures;

(g) failure by Contractor to maintain Plan as per Contract requirements;

(h) improper or inaccurate reporting of job progress.

2.04. **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 1.11 above or otherwise based on Contractor's obligations under this Contract, the Contract Administrator may request a corrective action plan (hereinafter referred to as "Corrective Action Plan") from Contractor by notifying Contractor in writing of the issue(s) which constitute unsatisfactory performance, and direct Contractor to provide a written Corrective Action Plan. Contractor shall deliver a Corrective Action Plan within ten (10) business days of Contract Administrator's notification, and such plan shall be subject to written approval by the Contract Administrator. The Corrective Action Plan shall address how Contractor will correct the instances of unsatisfactory performance identified by TFC, and provide that Contractor shall, unless otherwise approved in advance by the Contract Administrator, complete all actions set forth in the Corrective Action Plan no later than thirty (30) calendar days following Contractor Administrator's approval of the Plan. Failure to correct all identified elements of unsatisfactory performance included in the notice requesting the Corrective Action Plan, within the time as set forth in this paragraph, shall entitle TFC to avail itself of one or more of the following remedies at TFC's sole discretion:

(i) TFC's removal of one or more facilities from the scope of this Contract; and/or

(ii) TFC's termination of this Contract.

(b) In addition, if Contractor is required to deliver and perform under more than one (1) Corrective Action Plan within any period of twelve (12) continuous months during the term

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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 or more of the following remedies at TFC's sole discretion:

(i) TFC's removal of one or more facilities 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 performed 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.

2.05. **CHANGE IN FEDERAL OR STATE REQUIREMENTS.** If federal or state laws, rules, regulations or requirements applicable to this Contract are amended, performance under this Contract will be subject to the laws, rules, regulations or requirements applicable at the time of performance under the Contract. If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either TFC or Contractor cannot reasonably fulfill the Contract and if the parties cannot agree to an amendment that would enable substantial continuation of the contract, the parties shall be discharged from any further obligations under the Contract.

2.06. **RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT.** In the event that the Contract is terminated for any reason, or upon its expiration, TFC shall retain ownership of all associated work products and documentation obtained from the Contractor under this Contract.

2.07. **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 Ninety Four Thousand Eighty Dollars and 00/100 ($94,080.00.) This amount includes the Fiscal Year 2019-20 contract base fee for Thirty Four Thousand Eighty Dollars and 00/100 ($34,080.00) and Sixty Thousand and 00/100 ($60,000.00) to cover any Additional Services, as defined in Section 3.03 below. Pricing fees will be invoiced in accordance with Exhibit B - Compensation and Fees, attached hereto and incorporated herein for all purposes. Any changes to the not-to-exceed amount of this Contract or pricing fees set forth in Exhibit B - 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.

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3.02. **PAYMENTS TO CONTRACTOR.** (a) Payments to contractor will be made on a monthly basis and 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 the Contract Administrator. For large projects, partial payment may be allowed once per month on completed work with acceptance and approval of Contract Administrator.

(b) Contractor shall invoice TFC for work performed by vendor identification number, building, purchase order number and Delivery Release number if applicable. 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 service ticket. Additionally, invoices for any materials purchased or subcontractor invoices for each project must be provided. Address for submission is: Texas Facilities Commission, Accounts Payable, P.O. Box 13047, Austin, Texas 78711-3047 or accountspayable@tfc.state.tx.us.

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 rates set forth in Exhibit B – Compensation and Fees and shall be documented by a Delivery Release.

(b) Additional Services may also include the addition of units and/or facilities for which no unit price was included in Exhibit B – Compensation and Fees and may be added to this Contract provided TFC and Contractor agree to a unit price. Prices for any additional units shall be calculated by comparing pricing to similar services included in Exhibit B – Compensation and Fees. The addition of units and/or facilities 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. An adjustment will be made when a service is no longer required 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.

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 may 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

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

4.05. **CONTRACTOR SAFETY.** (a) All Contractors and subcontractors conducting work for TFC shall abide by all OSHA rules and regulations provided by the Department of Labor, OSHA, Code of Federal Regulations, Chapter 29. Employees of Contractor and subcontractors shall be trained in accordance with Chapter 29, Occupational Safety and Health Regulations (hereinafter referred to as "OSHA").

(b) Contractor and subcontractors shall inform the Contract Administrator of their Hazardous Electrical Energy Control, Lockout/Tag-out Procedure. Contractor's procedure must meet or exceed TFC's procedure as determined by the Contract Administrator.

(c) Work shall not be done on energized electrical circuits, components or equipment. When de-energizing is impractical due to possible harm to personnel, equipment or facility damage, negative onsite or offsite environmental impact, or business interruption Contractor must follow OSHA requirements as detailed in OSHA Regulations 1910.331 – 1910.399.

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

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

(c) Contractor agrees to employ competent personnel meeting the requirements outlined in the specifications, who shall be satisfactory to TFC. Personnel assigned to perform services under this Contract may not be reassigned without the prior written approval by the Contract Administrator. TFC may request that Contractor replace unsatisfactory personnel, which request shall not be unreasonably denied.

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

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

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

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

(b) Contractor shall provide, upon request of TFC and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed. **IF THIS CERTIFICATION IS FALSELY MADE, THE CONTRACT MAY BE IMMEDIATELY TERMINATED, AT THE DISCRETION OF TFC, AND AT NO FAULT TO TFC, WITH NO PRIOR NOTIFICATION. CONTRACTOR SHALL ALSO BE RESPONSIBLE FOR THE COSTS OF ANY RE-SOLICITATION THAT TFC MUST UNDERTAKE TO REPLACE THE TERMINATED CONTRACT.**

V. STATE FUNDING.

5.1. **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

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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.** (a) 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 will 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 will 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

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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'S RESPONSIBILITIES AND WARRANTIES.

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

7.02. **PERFORMANCE STANDARDS.** (a) All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and shall comply with all federal, state, and local laws, rules, codes and ordinances and comply with the OSHA accessibility requirements.

(b) Appropriate dress is required for all personnel. Prohibited attire includes, but is not limited to, the following:

(i) athletic clothing and lounge attire of any type;

(ii) clothing that displays offensive messages (picture or print);

(iii) clothing that is see-through, low cut, or bares the midriff; and

(iv) flip-flop sandals.

(c) Eating is prohibited on jobsites except in designated cafeterias.

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

(c) All Contractor employees on jobsite will:

(i) Wear clean uniforms in good repair daily;

(ii) Keep shirttail tucked in during business hours;

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

(iv) Wash hair regularly, comb or brush before starting work and keep trimmed; and

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

7.03. **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 and Texas Department of Agriculture requirements.

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7.04. **PERFORMANCE WARRANTY.** All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and of local, state and federal codes and ordinances and any other authority having lawful jurisdiction. Work performed under this Contract shall meet all applicable requirements of the latest revision of the Uniform Building and Plumbing codes, National Electric Code, and all other applicable codes. Contractor shall guarantee all work included in the Contract against any defects in workmanship and shall satisfactorily correct, at no cost to TFC, any such defect that may become apparent within a period of one (1) year after completion of work. The warranty period shall commence upon the date of acceptance by TFC.

7.05. **MATERIAL WARRANTY.** All material and equipment furnished under this Contract is guaranteed by Contractor to be in compliance with this Contract, fit and sufficient for the purpose intended, new and free from defects. Materials furnished under this Contract shall be the latest improved models in current production, as offered to commercial trade, and shall be of high-quality material. **USED, SHOPWORN, DEMONSTRATOR, PROTOTYPE, RECONDITIONED, OR DISCONTINUED MODELS OR MATERIAL ARE NOT ACCEPTABLE.** The warranty period for Contractor-provided materials shall be for a period of one (1) year after completion of the installation or within the manufacturer's warranty, whichever is longer. The warranty period shall commence upon date of acceptance by TFC. Contractor shall provide TFC's Contract Administrator with all manufacturers' warranty documents within five (5) business days of completion of each project.

7.60. **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. BONDS, INSURANCE, INDEMNIFICATION AND LEGAL OBLIGATIONS.

8.01. **BONDS.**

(a) Payment and Performance Bonds. Prior to commencement of work under a Delivery Release under this Contract, Contractor is required to tender payment and performance bonds to TFC, as required by Texas Government Code, Chapter 2253, when the following circumstances apply:

(i) A performance bond is required if a Delivery Release under this Contract is in an amount in excess of $100,000.00. The performance bond is solely for the protection of TFC. The performance bond is to be for the sum of a Delivery Release of $100,000.00 or more, to guarantee the faithful performance of the work in accordance with the Contract. The performance bond shall be effective through Contractor's warranty period.

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When submitting a proposal for services as requested by the Contract Administrator. Contractor shall provide documentation for the cost of the performance bond.

(ii) A payment bond is required if a Delivery Release under this Contract is in an amount in excess of $25,000.00. The payment bond is to be for the sum of a Delivery Release in excess of $25,000.00 and is payable to TFC solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with Contractor or a subcontractor. When submitting a proposal for services as requested by the TFC Contract Administrator, Contractor shall provide documentation for the cost of the payment bond.

(b) Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to TFC, on TFC's form, attached hereto and incorporated herein as Exhibit D – Payment and Performance Bond [Forms], and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than ten (10) percent of the surety's capital and surplus, TFC may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than ten (10) percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to TFC.

(c) Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embosses seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

(d) The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Texas Government Code, Chapter 2253. **IF FOR ANY REASON A STATUTORY PAYMENT OF PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.**

(e) TFC shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Texas Government Code, Section 2253.026.

(f) Claims on payment bonds must be sent directly to Contractor and its surety in accordance with Texas Government Code, Section 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to TFC may result in loss of their rights against Contractor and/or its surety. TFC is not responsible in any manner to a claimant for collection of unpaid bills and accepts no such responsibility because of any representation by any agent or employee.

(g) The rights of subcontractors regarding payment are governed by Texas Property Code, Sections 53.231–53.239 when the value of a Delivery Release is less than $25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.

(h) Sureties shall be listed on the US Department of the Treasury's Listing Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on federal bonds and acceptable reinsuring companies (Department Circular 570).

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8.02. **INSURANCE.** (a) 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 including corresponding policy endorsements, and make available, at no cost to TFC, copies of policy declaration pages and policy endorsements as evidence thereof:

(b) Workers' Compensation and Employers' Liability coverage with minimum policy limits for employers' liability of $1,000,000.00 bodily injury per accident, $1,000,000.00 bodily injury disease policy limit and $1,000,000.00 per disease, per employee. Workers' compensation insurance coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(46). Pursuant to Texas Labor Code Section 406.096, certification in writing from Contractor and Contractor's subcontractors shall be provided to TFC upon request and without expense.

(c) Commercial General Liability with a combined single limit of $1,000,000.00 per occurrence for coverage A and B including products/completed operations, where appropriate, with a separate aggregate of $2,000,000.00 for bodily injury and for property damages. The general aggregate limit shall apply on a per project basis. 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.

(d) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of $1,000,000.00 per accident for bodily injury and property damage. Alternate acceptable limits are $1,000,000.00 bodily injury per person, $1,000,000.00 bodily injury per accident and at least $500,000.00 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.

(e) Umbrella Liability Insurance for an amount of not less than $1,000,000.00 that provides coverage at least as broad as and applies in excess and follows the form of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

8.03. **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

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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 and Employers' Liability);

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

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

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

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

(i) TFC reserves the right to review the insurance requirements of this section during the effective period of the Contract and to make reasonable adjustments to insurance coverage and its 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).

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(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.

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

8.05. **INFRINGEMENTS.** (a) **CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.**

(b) **CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY:**

(i) **USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED;**

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(ii) **ANY MODIFICATION MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL;**

(iii) **ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO TFC'S SPECIFIC INSTRUCTIONS;**

(iv) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TFC; OR

(v) **ANY USE OF THE PRODUCT OR SERVICE BY TFC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.**

(c) **IF CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT CONTRACTOR'S SOLE OPTION AND EXPENSE:** (i) **PROCURE FOR TFC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE; OR** (ii) **MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TFC'S USE IS NON-INFRINGING.**

8.06. **TAXES, WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY.** (a) **CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.**

(b) **CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE**

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OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

8.07. **NOTICE TO TFC.** In the event Contractor becomes aware of any claim that may be subject to the above-described indemnification, Contractor shall notify TFC of such claim within five (5) business days of becoming aware.

8.08. **SETTLEMENT AUTHORITY.** No settlement of any such claim shall be made by Contractor without TFC's prior written approval.

8.09. **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.

8.10 **COMPLIANCE WITH LAWS.** Contractor shall comply with all applicable federal, state, and local laws, including laws governing labor, equal 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, that in any manner affect performance under this Contract.

IX. CONTRACTOR GENERAL AFFIRMATIONS.

9.01. **FINANCIAL INTERESTS/GIFTS.** (a) Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, Contractor has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

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

9.02. **EXECUTIVE HEAD OF AGENCY.** 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.

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9.03. **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.

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

9.05. **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.

9.06. **DISASTER RELIEF CONTRACT VIOLATION.** Under Sections 2155.006 and 2261.053, Texas Government Code, 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.

9.07. **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.

9.08. **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.

9.09. **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.

9.10. **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

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treated during employment without regard to their race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief. 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.

9.11. **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.

9.12. **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.

9.13. **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.

9.14. **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.

9.15. **IMMIGRATION REFORM.** (a) The Immigration Reform and Control Act of 1986, as amended, and the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, requires that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors and subcontractors who contract with the State. Contractor shall not place any

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employee of Contractor at a worksite, nor shall Contractor permit any employee, nor any subcontractor, to perform any work on behalf of or for the benefit of TFC without first confirming said employee's authorization to lawfully work in the United States.

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

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

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

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

9.17. **PROHIBITION AGAINST CONTRACTING WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS.** In accordance with Section 2251.152 of the Texas Government Code, TFC is prohibited from entering into a governmental contract (as defined in Texas Government Code Section 2252.151(3)) with a company that is identified on a list prepared and maintained under Texas Government Code Section 806.051, 807.051, or 2252.153. If contractor is on the above-referenced list the Contract will be considered void or voidable and TFC will not be responsible to pay Contractor for any work performed.

XI. MISCELLANEOUS PROVISIONS.

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

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(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 E – HUB Subcontracting Plan [Form], 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).** (a) 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. A copy of Exhibit F - Initial Approved HUB Subcontracting Plan ("HSP") is attached hereto and incorporated herein for all purposes. 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 E – HUB Subcontracting Plan [Form], attached hereto and incorporated herein for all purposes. When §required, Contractor shall submit an updated HSP. Upon TFC approval of HSP update(s), such update(s) shall become, without further notice or action, a part of the incorporated Exhibit F – Initial Approved HUB Subcontracting Plan ("HUB"). In addition to information required by Section 11.1 above, Contractor shall provide TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on Exhibit G – HSP Progress Assessment Report [Form] ("PAR"), attached hereto and incorporated herein for all purposes. PARs shall be submitted monthly with each invoice and are a condition of payment.

(b) Requirement to Utilize HUB Compliance Reporting System. Pursuant to Texas Administrative Code, Title 34 §§ 20.85(f)(l)(2) and 20.287(b), TFC administers monthly HSP-PAR compliance monitoring through a HUB Compliance Reporting System commonly known as B2G. Contractor and Contractor's Subcontractors must submit required PAR information into the B2G system. Any delay in the timely submission of PAR information into the B2G system will be treated as an invoicing error subject to dispute under Tx. Gov't Code Section 2251.042.

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

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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. **ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS.** (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 universal resource locator ("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.** (a) 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

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

(i) For TFC:
Texas Facilities Commission
1711 San Jacinto Blvd., Room 400
Austin, TX 78701
Attention: Legal Services Division
Phone: (512) 463-7220

(ii) For Contractor:
Pest Management, Inc.
1807 West Slaughter Lane
Austin, Texas 78748
Attention: Tiffany DiCicco, Vice President
Phone: (512) 288-1007
Email: tiffany@pestmanagementcorp.com

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

10.10. **NAME AND ORGANIZATIONAL CHANGES.** (a) Contractor must provide TFC with written notification of all name changes and organizational changes relating to Contractor including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change. Contractor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for Contractor, Contractor shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Contract and Contractor shall supply the requested information within five (5) working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor or successor entity, as applicable, to maintain its status as a party to this Contract.

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

10.10. **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

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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. **SCHEDULE OF EXHIBITS.** The following shall be the exhibits to this Contract and are incorporated herein by reference.

10.17.1.	Exhibit A	TFC Building List.
10.17.2.	Exhibit B	Compensation and Fees.
10.17.3.	Exhibit C	Criminal Background Checks and Application Guidelines.
10.17.4.	Exhibit D	Payment and Performance Bond [Forms].
10.17.5.	Exhibit E	HUB Subcontracting Plan [Form].
10.17.6.	Exhibit F	Initial Approved HUB Subcontracting Plan.
10.17.7.	Exhibit G	HSP Progress Assessment Report [Form].

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

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

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

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

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

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10.23. **ENTIRE AGREEMENT 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

DocuSigned by:
By: MIKE NOVAK, TFC EXECUTIVE DIRECTOR
B1C9FC0A8020417...

Mike Novak

Executive Director

Date of execution: 08/29/2019 | 1:29 PM CDT

GC

Dir.

DED

PEST MANAGEMENT, INC.

DocuSigned by:
By: TIFFANY DICICCO, VICE PRESIDENT
2E6C77837086431...

Tiffany DiCicco

Vice President

Date of Execution: 08/29/2019 | 1:14 PM CDT

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EXHIBIT A

TFC BUILDING LIST

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TFC BUILDING LISTING

Bldg. ID	Facility Name	Address	Gross Sq. Ft.
	GROUP 1		
TSBVI	Texas School for the Blind and Visually Impaired	1100 W. 45th St.	344,323 approx.
	GROUP 2		
TSD	Texas School for the Deaf	1102 S. Congress Ave.	545,000 approx.
	GROUP 3		
P35A	TCEQ Park 35 Building A	12100 N. IH 35	191,889
P35B	TCEQ Park 35 Building B	12124 N. IH 35	50,569
P35C	TCEQ Park 35 Building C	12124 N. IH 35	78,888
P35D	TCEQ Park 35 Building D	12118 N. IH 35	52,906
P35E	TCEQ Park 35 Building E	12118 N. IH 35	46,330
P35P	TCEQ Park 35 Parking Lots	12100 N. IH 35	547,903
	GROUP 4		
HSW	Human Services Warehouse/Pharmacy	1111 North Loop	40,264
	GROUP 5		
ARC	Lorenzo de Zavala Archives & Library	1200 Brazos	110,999
BHB	Brown-Heatly Building	4900 North Lamar	259,224
CCF1	Child Care Center Bldgs. (South)	1501 Lavaca	8,003
CCF2	Child Care Center Bldgs. (North)	1507 Lavaca	3,332
CEBD	Cemetery Building Old Residence	709 Navasota	1,125
CEM	Cemetery Building	909 Navasota	4,796
CSB	Central Services Building	1711 San Jacinto	96,865
CSX	Central Services Annex	311 East 14th St.	15,070
DARS	DARS Administration Building	4800 North Lamar	47,447
DBGL	Dr Bob Glazer Lab (formerly DHNL)	1100 W. 49th St.	167,417
DHB	DSHS Headquarters Building (Old MHMR HQ)	909 W. 45th St.	72,182
DHF	DSHS Building F	1100 W. 49th St.	7,485
DHH	DSHS Building H	1100 W. 49th St.	1,500
DHK	DSHS Building K	1100 W. 49th St.	4,679
DHR	DSHS Records Building	1100 W. 49th St.	30,984
DHSB	DSHS Service Building	1100 W. 49th St.	40,000
DHT	DSHS Tower	1100 W. 49th St.	100,997
DHX	DSHS Annex (Old MHMR Annex)	909 W. 45th St.	17,564
DROC	Disaster Recovery Operations	1001 W. No. Loop	25,295
INS	Insurance Building	1100 San Jacinto	86,029
INW	Insurance Warehouse	7915 Cameron Road	25,479
INX	Insurance Annex	221 E. 11th St.	59,757
JER	James E. Rudder Building	1019 Brazos	77,880

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JHR	John H. Reagan Building	105 West 15th Street	161,811
JHW	John H. Winters Building	701 West 51st Street	482,584
LBJ	Lyndon B. Johnson Building	111 E. 17th St.	299,512
PDB	Price Daniel, Sr. Building	209 West 14th St.	136,430
PROM	Promontory Point	4044 Promontory Point	141,566
RBB	Robert Bernstein Building (formerly DHG)	1100 W. 49th St.	59,917
RDM	Robert D. Moreton Building	1100 W. 49th St.	123,018
REJ	Robert E. Johnson Building	1501 North Congress	307,090
SCB	Supreme Court Building	201 W. 14th St.	69,253
SFA	Stephen F. Austin Building	1700 North Congress	417,141
SHB	Sam Houston Building	201 East 14th St.	170,967
SRC	State Records Center	4400 Shoal Creek Blvd.	130,728
TCC	Tom C. Clark Building	205 West 14th St.	101,299
THO	E. O. Thompson Building	920 Colorado	67,689
TJR	Thomas Jefferson Rusk Building.	200 E. 10th St.	99,971
WBT	William B. Travis Building	1701 North Congress	466,020
WHB	Warehouse at Bolm Road	6506 Bolm Road	50,622
WLL	Wheless Lane Laboratory	2801 Wheless Lane	3,516
WPC	William P. Clements Building	300 West 15th St,	473,338
WPH1	William P. Hobby Building Twr. I	333 Guadalupe St.	229,759
WPH2	William P. Hobby Building Twr. II	333 Guadalupe St.	49,453
WPH3	William P. Hobby Building Twr. III	333 Guadalupe St.	140,064

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EXHIBIT B

COMPENSATION AND FEES

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Respondent Name: Pest Management, Inc.

COMPENSATION AND FEES

TFC reserves the right to make multiple awards under this RFP. Respondents are not required to bid on all GROUPS indicated below; however, Respondents shall submit pricing for all items within the GROUPS where pricing is submitted.

GROUP 1 – TEXAS SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED

Integrated Pest Management Services

1. **Texas School for the Blind and Visually Impaired Campus – Monthly Cost**

   $450.00

   Group 1 Annual Cost (monthly cost x 12): $5400.00

GROUP 2 – TEXAS SCHOOL FOR THE DEAF

Integrated Pest Management Services

1. **Texas School for the Deaf Campus – Monthly Cost** $625.00
2. **Group 2 Annual Cost (monthly cost x 12):** $7500.00

GROUP 3 – TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Integrated Pest Management Services

1. **Texas Commission on Environmental Quality Complex – Monthly Cost** $345.00

   Group 3 Annual Cost (monthly cost x 12): $4140.00

GROUP 4 – HUMAN SERVICES WAREHOUSE/PHARMACY

Integrated Pest Management Services

1. **Human Services Warehouse – Monthly Cost** $80.00

   Group 4 Annual Cost (monthly cost x 12): $960.00

GROUP 5 – AS-NEEDED ONLY (NO MONTHLY SERVICE PLAN)

1. **Pests typically included in Contract:** $75.00/hour per service call/treatment (for all bldgs)

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Additional Services Rates for Excluded Pests (With Monthly Plan): Pricing requested is for the initial service call/treatment per each work order request. If a work order requires additional time/services, those services will be estimated at the labor hourly rate noted below as items 14 and 15.

1. **Rodents:** $22.00 per trap (outdoor only) $3.00 monthly monitoring fee per trap
2. **Carpenter Ants:** $65.00 per hour
3. **Termites:** $3.25 per linear foot
4. **Bed Bugs:** $.60 (min $400) per square foot (chemical)
5. **Bed Bugs:** $1.00 (min $600) per square foot (heat)
6. **Brown Recluse / Black Widow:** $65.00 per hour
7. **Wildlife Control:** $50.00 per dead animal removal
8. **Wildlife Control:** $125.00 per week (live animal trapping)
9. **Snakes:** $50.00 per dead animal removal
10. **Snakes:** $75.00 per week (live animal trapping)
11. **Bats:** $125.00 per hour (removal)*
12. **Birds:** $125.00 per time plus materials
13. **Honey Bees:** $150.00 per hour (removal)**
14. **Technician Hourly Rate – Regular Time (for Excluded Pests):**

    $65.00 per hour

15. **Technician Hourly Rate – Emergency/Overtime (for Excluded Pests):**

    $97.50 per hour

    **TFC may negotiate rates for large or difficult to reach infestations*

    ***TFC may negotiate rates for large and difficult to reach infestations or if bees are determined to be Africanized*

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Additional Services Rates for Excluded Pests (Without Monthly Plan): Pricing requested is for the initial service call/treatment per each work order request. If a work order requires additional time/services, those services will be estimated at the labor hourly rate noted below as items 14 and 15.

1. **Rodents:** $25.00 per trap (outdoor only) $3.50 monthly monitoring fee per trap
2. **Carpenter Ants:** $150.00 per hour
3. **Termites:** $3.75 per linear foot
4. **Bed Bugs:** $0.65 (minimum $450.00) per square foot (chemical)
5. **Bed Bugs:** $1.25 (minimum $800.00) per square foot (heat)
6. **Brown Recluse / Black Widow:** $95.00 per hour
7. **Wildlife Control:** $65.00 per dead animal removal
8. **Wildlife Control:** $175.00 per week (live animal trapping)
9. **Snakes:** $60.00 per dead animal removal
10. **Snakes:** $95.00 per week (live animal trapping)
11. **Bats:** $150.00 per hour (removal)*
12. **Birds:** $150.00 per time plus materials
13. **Honey Bees:** $75.00 per hour (removal)**
14. **Technician Hourly Rate – Regular Time (for Excluded Pests):**

    $75.00 per hour

15. **Technician Hourly Rate – Emergency/Overtime (for Excluded Pests):**

    $105.00 per hour

    **TFC may negotiate rates for large or difficult to reach infestations*

    ***TFC may negotiate rates for large and difficult to reach infestations or if bees are determined to be Africanized*

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EXHIBIT C

CRIMINAL BACKGROUND CHECKS AND APPLICATION GUIDELINES

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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.

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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:

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

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

Mandy Burrell, Manager
Office: 512-463-1799
Cell: 512-247-1290
Email:
mandy.burrell@tfc.state.tx.us

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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.

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ATTACHMENT B

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IdentoGO
By MorphoTrust USA

Facilities Commission

Texas Fingerprint Service Code Form

Service Name: Facilities Commission

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

11G6ZN

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

Background Check Waiver

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

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

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

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EXHIBIT D

PAYMENT AND PERFORMANCE BOND [FORMS]

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PAYMENT BOND

STATE OF TEXAS
COUNTY OF _____

LET IT BE KNOWN BY THIS INSTRUMENT:

That we, _____ as principal

and we _____ a corporation duly authorized to do business in this State, as Surety(s), are this date held and firmly bound unto the State of Texas in the amount of _____

_____ Dollars $ _____

for payment of which indemnity the said Principal and Surety, by this declaration, do firmly bind themselves, their heirs, executors, administrators, successors and assigns, jointly and individually.

Since a Contract, which by reference is made a part hereof, exists between Principal and the State of Texas, acting by and through the Texas Facilities Commission, and dated _____ for the _____

The conditions of this obligation are, therefore, such that it shall remain in full force and effect unless and until the Principal shall faithfully perform the Contract in accordance with the Contract Documents.

The liabilities, rights, limitations, and remedies concerning this Bond shall be determined in accordance with the provisions of Chapter 2253 of the Texas Government Code, amended by Acts of 73rd Legislature, 1993 pursuant to which Bond is executed.

IN WITNESS TO THIS DECLARATION, the said Principal and Surety(s) have signed and sealed this instrument

this _____ day of _____

PRINCIPAL	SURETY
By _____	By _____
	Bond Identification No. _____
	_____ Address of Attorney-In-Fact
	_____ Telephone No. of Attorney-In-Fact

(Use of this form for the purposes indicated has been approved by the Attorney General of Texas)

Revised 8-2007

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PERFORMANCE BOND

STATE OF TEXAS
COUNTY OF _____

LET IT BE KNOWN BY THIS INSTRUMENT:

That we, _____ as principal

and we _____ a corporation duly authorized to do business in this State, as Surety(s), are this date held and firmly bound unto the State of Texas in the amount of _____

_____ Dollars $ _____

for payment of which indemnity the said Principal and Surety, by this declaration, do firmly bind themselves, their heirs, executors, administrators, successors and assigns, jointly and individually.

Since a Contract, which by reference is made a part hereof, exists between Principal and the State of Texas, acting by and through the Texas Facilities Commission, and dated _____ for the _____

_____

The conditions of this obligation are, therefore, such that it shall remain in full force and effect unless and until the Principal shall faithfully perform the Contract in accordance with the Contract Documents.

In the event of Principal's failure, as defined by the Contract Documents, to faithfully perform the Contract, Surety(s) will within fifteen (15) days of determination of default, assume full responsibility for completion of said Contract and become entitled to payment of the balance of the Contract amount.

The liabilities, rights, limitations, and remedies concerning this Bond shall be determined in accordance with the provisions of Chapter 2253 of the Texas Government Code, amended by Acts of 73rd Legislature, 1993 pursuant to which Bond is executed.

IN WITNESS TO THIS DECLARATION, the said Principal and Surety(s) have signed and sealed this instrument

this _____ day of _____

PRINCIPAL

By_____

SURETY

By _____

Bond Identification No. _____

_____
Address of Attorney-In-Fact

_____
Telephone No. of Attorney-In-Fact

(Use of this form for the purposes indicated has been approved by the Attorney General of Texas)

Revised 8-2007

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EXHIBIT E

HUB SUBCONTRACTING PLAN [FORM]

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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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Rev. 2/17

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.*

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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.*

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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.

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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		$	%
	☐ - 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.

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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

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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

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EXHIBIT F

INITIAL APPROVED HUB SUBCONTRACTING PLAN

[No HSP is required unless/until Contract amount is $100,000.00 or greater.]

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EXHIBIT G

HSP PROGRESS ASSESSMENT REPORT [FORM]

DocuSign Envelope ID: BB27E120-6AEB-4D2B-8503-A0A96905AC6C

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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		TOTALS:	$ -	$ -	$ -	

Signature: _____ Title: _____ Date: _____