

**CONTRACT  
FOR  
CHILLER PREVENTATIVE MAINTENANCE  
AND REPAIR SERVICES  
BETWEEN  
THE TEXAS FACILITIES COMMISSION  
AND  
TRANE U.S. INC.**

The Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Blvd., Austin, Texas 78701 and Trane U.S. Inc. (hereinafter referred to as "Contractor"), located at 9801 Metric Boulevard Suite 400, Austin Texas 78757 enter into the following contract for chiller maintenance and repair services (hereinafter referred to as the "Contract") pursuant to TEX. GOV'T CODE ANN. Ch. 2165 (West 2016).

**I. STATEMENT OF WORK.**

1.1. **GENERAL.** (a.) Contractor shall provide chiller preventive maintenance and repair services for various State owned and/or maintained office buildings located in the Austin, Texas metropolitan area as listed in Exhibit A - Building and Equipment List, attached hereto and incorporated herein for all purposes. Contractor shall provide all labor, materials, equipment, tools and transportation required to perform these services. All chiller repair work and maintenance shall follow the manufacturer's recommendations.

(b.) Prior to chiller maintenance or repairs, Contractor must contact the Contract Administrator, as defined in Section 1.2 below, to have equipment taken out of service by shutting down, or being turned off, at the equipment disconnect. Once services are complete, the equipment shall be put back into service by TFC Plant Operations.

(c.) Contractor shall provide replacement parts for chillers within seventy two (72) hours from the date and time of notification by TFC. Exceptions to this must be approved by the Contract Administrator.

(d.) Contractor shall purchase and provide all manufacturers replacement parts for each model of chiller. After-market parts are not to be used unless approved by the Contract Administrator.

(e.) All maintenance, repair and alteration work must comply with the applicable rules and regulations of the United States Environmental Protection Agency, Section 608 of the Clean Air Act, 2012 Uniform Mechanical Code, 2012 International Mechanical Code, TAC Title 16, Chapter 75 Air Conditioning and Refrigeration, and Austin Ordinance Title 6 Environmental Control & Conservation, Chapter 6, Article 1.

(f.) Contractor shall provide, mobilize and connect temporary chillers on an as-needed basis. Mobilization shall occur within two (2) hours of notification. Temporary chillers shall be provided at the rates listed in Exhibit B - Compensation and Fees.

(i.) Contractor shall supply all chiller types and cooling tower trailer mounted, if requested.

(ii.) Contractor is responsible for the turnkey connection of all of the temporary equipment connections including electrical connections. Electrical connections will be coordinated through the TFC electrical core group. The chiller piping connection will be coordinated through the TFC Operations and HVAC Group.

(iii.) Temporary chillers, particularly water cooled centrifugal chillers, shall arrive on a trailer mounted platform as a self-contained plant with cooling towers and pumps, all trailer mounted if possible. Larger tonnage chillers may require an array of chillers depending upon the needed tonnage.

(iv.) A larger centrifugal chiller will need to be mounted on a trailer. Cooling towers will be mounted on a separate trailer, if applicable. A separate cooling tower will only be required if the plant cooling tower is inoperable or down for repairs, replacement or if TFC decides not to use the existing cooling towers for any reason.

(v.) Air cooled chillers will be trailer mounted unless requested differently by TFC. Air cooled plants shall arrive on a trailer mounted platform as a self-contained plant with pumps, all trailers mounted if possible. Some instances may require an array of chillers depending upon the needed tonnage.

1.2. **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.

1.3. **PERFORMANCE REQUIREMENTS.** Contractor's performance shall include, but not limited to, the following when performing chiller maintenance:

(i.) provide all major and minor chiller repairs, that include, but are not limited to, the following: diagnostic, rebuilds, overalls, teardowns, refrigerant reclamations, retrofits and re-tubes.

(ii.) perform annual preventative maintenance per the manufacturer's guidelines.

(iii.) remove and dispose of all trash and oil from floors when job is completed for the day.

(iv.) provide appropriate off-site disposal of used parts and trash

(v.) report any observed equipment deficiencies to the Contract Administrator the same day they have been observed.

(vi.) provide Contractor quote that is itemized as per Exhibit B - Compensation and Fees. Quotes for subcontracted services shall be included with the Contractor quote and itemized by materials and labor.

ANNUAL MAINTENANCE. (a.) Contractor shall provide all required labor, tools, parts, and materials to complete scheduled maintenance tasks as per manufacturer recommendation which if applicable shall include, but not be limited to:

(i.) review of diagnostics;

(ii.) review of purge report;

(iii.) conduct refrigerant leak check;

(iv.) oil level and temperature check;

(v.) oil analysis per circuit;

(vi.) change oil filter;

(vii.) check oil heater;

(viii.) change purge filter drier;

(ix.) lock out tag out units with potentially high or medium voltage starters;

(x.) purge plus expiration date check (high performance);

(xi.) vane linkage and valve lubrication;

(xii.) motor bearing lubrication;

- (xiii.) condenser tube brushing including head removal;
- (xiv.) remove second (2<sup>nd</sup>) head;
- (xv.) replace magnesium donut anode;
- (xvi.) install threaded studs for anodes, as needed;
- (xvii.) open starter panel door(s);
- (xviii.) compressor starter inspection;
- (xix.) control panel electrical inspection;
- (xx.) control panel calibration check;
- (xxi.) low temperatures sensor calibration;
- (xxii.) drain rupture disc vent line;
- (xxiii.) clean coils;
- (xxiv.) top off fluids;
- (xxv.) remove lock out tag out and restore power for units with medium or high voltage starters;
- (xxvi.) pre-start chiller check;
- (xxvii.) start chiller;
- (xxviii.) manual log with electronic device; and
- (xxix.) check chiller for unusual noise and vibration.

(b.) Contractor shall record and report abnormal conditions and measurements taken.

(c.) The maintenance report shall be given to the Contract Administrator.

(d.) Contractor shall report completed buildings to the Contract Administrator on a Contractor supplied form approved by the Contract Administrator via e-mail daily.

1.4. **Ten (10) YEAR MAINTENANCE.** (a.) Contractor shall provide all required labor, tools, parts and materials to complete scheduled maintenance tasks as per manufacturer recommendation which if applicable, shall include, but not be limited to, the following.

(i.) Disassemble compressor section. The compressor motor bearings shall be replaced with new factory bearings. The first (1st) and third (3rd) stage vane assemblies shall be rebuilt using new bearings and bushings. The first and second stage impellers shall be balanced and inspected visually for cracks and wear. The compressor motor shall be completely disassembled cleaned, re-varnished, and baked. The compressor motor shall be balanced. The balancing of individual components shall be accomplished in a manner that will insure each component to be within a tolerance of two (2) milliliters.

(ii.) The oil sump shall be opened and thoroughly cleaned. The oil pump motor shall be cleaned, re-varnished and abated.

(iii.) The starter shall be thoroughly cleaned, checked and all connections tightened.

(iv.) During the reassembly process, all gaskets and O-ring, shall be replaced using new factory parts. On completion of the reassembly process, the unit shall be thoroughly leak checked and dehydrated. The unit shall be charged with existing refrigerant and placed in operation. The safety and operating controls shall be checked and calibrated and an operating log shall be completed along with the submission of a condition report.

(v.) Any parts not listed above which will require replacement shall be itemized, priced according to Exhibit B - Compensation and Fees, and submitted for approval to the Contract Administrator prior to replacing.

(vi.) Temporary Chiller: Provide a temporary chiller of appropriate size for operation while chiller is receiving ten (10) year maintenance services.

(b.) The maintenance report shall be given to the Contract Administrator.

(c.) Contractor shall report completed buildings daily via email to the Contract Administrator on a Contractor supplied form approved by the Contract Administrator.

1.5. OIL CHANGES. When requested by Contract Administrator, as advised by Contractor as per chiller manufacturer recommendations. Contractor shall provide all parts, materials and labor to replace the compressor motor oil as per manufacturer specifications at the amount included on Exhibit B - Compensation and Fees.

1.6. DELIVERY RELEASE SERVICES. (a.) TFC may, from time to time, initiate maintenance and repair projects based on deficiencies documented during chiller maintenance services under this Contract or to effect repairs due to system failures. Such requests for services shall be documented through a separate document (hereinafter referred to as a "Delivery Release"). Each Delivery Release will constitute an amendment to this Contract, subject to the terms and conditions set forth in this Contract, and shall include a description of the project assignment, scope of services, schedule and term, and compensation specific to the Delivery Release which shall be negotiated at the time of such Delivery Release. Any work completed by Contractor without a Delivery Release will not be paid for by TFC.

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

(c.) Contractor's response to an initial request shall include the following types:

(i.) Non-Emergency. Contractor's initial response shall be within one (1) business day, unless otherwise agreed to by the Contract Administrator. Contractor shall have a technician on site in the time frame agreed to by the Contract Administrator at the time of the Contractor's initial response.

(A.) Contractor, after reviewing conditions, will provide Contract Administrator a quote for services as per Exhibit B - Compensation and Fees.

(B.) Upon acceptance of quote. Contractor shall perform services as per the Contract.

(ii.) Emergency. Contractor's initial response shall be within fifteen (15) minutes, unless otherwise agreed to by the Contract Administrator. Contractor shall have a technician on site within two (2) hours, unless otherwise agreed to by the Contract Administrator at the time of the Contractor's initial response. In an emergency, Contractor may begin services upon verbal direction from the Contract Administrator. Written confirmation will follow within twenty-four (24) hours of initial call. As soon as possible, Contractor shall provide the Contract Administrator a quote for a not-to-exceed price for repairs as per Exhibit B - Compensation and Fees.

(d.) 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", or summary list, for the services performed under a Delivery Release. Contractors shall provide the following information on the Service Ticket:

- (i.) building name;
- (ii.) asset name and number;
- (iii.) TFC work order number;
- (iv.) name of Contractor personnel performing the work;
- (v.) trade category of person(s) performing work;
- (vi.) number of hours worked;
- (vii.) itemized list of parts/material used/replaced; and,

(viii.) narrative description of what the technician found that was causing the problem and what was done to correct it.

(e.) Contractor shall be responsible for examining all facilities in 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 project.

1.7. **CALLBACK.** For the purpose of evaluating Delivery Release performance under this Contract, a "Callback" is defined as a failure due to a technician's inability, negligence or lack of knowledge to perform services. Contractor is to perform Callback Service at no additional cost to TFC, regardless of whether the work is performed during normal working hours or overtime hours. Contractor shall maintain a complete, orderly written report of all Callbacks. These "Callback Reports" shall indicate the time, date, name of personnel, problems reported and corrective measures taken to complete or repair all problems. A consolidated Callback Report is to be furnished to TFC as soon as the service is provided.

1.8. **CALLBACK RESPONSE.** Failure by Contractor to successfully complete the work described in a Delivery Release will result in a Callback. The Contract Administrator will contact the Contractor and notify them of the Callback. Contractor will respond to the Callback no later than the next business day with a technician possessing the technical expertise, knowledge and any required material to correct the problem. Contractor shall check in and out with the Contract Administrator to ensure that the Contract Administrator logs the commencement and completion times for the "Callback Service Ticket", or summary list, for the services performed to correct the problem described in the original Delivery Release. Contractor shall provide the following information on the Service Ticket:

- (i) building name;
- (ii) asset name and number;
- (iii) TFC work order number;
- (iv) name of Contractor personnel performing the work;
- (v) trade category of person performing the work;
- (vi) number of hours worked;
- (vii) itemized list of parts/material used/replaced; and,

(viii) narrative description of what the technician found that was causing the problem and what was done to correct it.

1.9. **SECURITY AND IDENTIFICATION.** Contractor shall abide by all procedures and rules as conveyed by Contract Administrator regarding security requirements of the property where work is to be performed. Contractor employees must wear either uniforms or appropriate clothing identifying them as employees of the Contractor at all times when working in TFC facilities.

Shorts and/or muscle shirts shall not be worn at any time. Contractor personnel must have a TFC supplied identification badge visible at all times when working in TFC facilities.

1.10. **CONTRACTOR ACCESS.** Access routes, entrance gates or doors, parking and storage areas, and other necessary Contractor access, along with any imposed time limitations shall be designated by 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 employee, vehicles, or equipment enter or move upon any area not authorized by Contract Administrator for access by Contractor.

1.11. **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.

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

1.13. **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.

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

## II. TERM.

2.1. **CONTRACT AWARD.** (a.) This Contract shall be effective as of the date of the last party to sign and shall expire on August 31, 2017 unless extended by the parties by amendment to this Contract or terminated earlier, as provided in Section 2.03 below. This Contract may be renewed for one (1) additional two (2) year period. Any renewals shall be at the same terms and conditions, plus any approved changes.

(b.) Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records right to audit and

independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of this Contract.

2.2. **WORKING HOURS.** Contractor shall perform the services set forth in this Contract that will not interfere with the day to day business operations of TFC facilities between the hours of 7:30 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) four hours a day 365 days a year and respond to the Contract Administrator. No overtime will be paid without the prior written approval of the Contract Administrator.

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

(b.) Termination without Default. TFC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice (the "Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by TFC under this subsection, Contractor shall be governed by the terms and conditions, and shall perform the acts outlined in the following Section 2.3(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 the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary as determined by Contract Administrator to preserve the work in progress and to protect materials, properties, and equipment. In the event of termination by TFC, TFC shall pay Contractor for all work satisfactorily performed up to the effective date of termination or reduction in the scope of work in accordance with the prices included in the scope of work.

(d.) Termination by Contractor. Contractor may terminate the Contract upon providing sixty (60) days' written notice to TFC. In the event of termination by Contractor, Contractor shall be governed by the terms and conditions of this Contract, and shall perform the acts outlined in Section 2.3(c.) above. Contractor will be held responsible for additional cost incurred from the termination of this Contract.

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

- (i.) more than one (1) Callback to correct the same problem within thirty days; (30) calendar
- (ii.) 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 or knowledge to perform the required service or test or inspection;
- (iii.) failure to timely complete and document required inspections;
- (iv.) failure to provide the tools necessary to complete the inspection, test or required service;
- (iv.) failure by Contractor, upon completion of testing, inspection or service, to place the serviced unit back into service or to leave it in other than it's normal state;
- (vi.) failure by Contractor to submit a complete and accurate invoice to the Contract Administrator no later than the fifth (5<sup>th</sup>) business day of the month following the month in which the services being invoiced were completed;
- (vii.) failure by Contractor to respond to an emergency call within the required timeframe;
- (viii.) the incorrect use, unsafe staging of equipment and/or inappropriate safety procedures;
- (ix.) failure by Contractor to provide suitable supervision;
- (x.) failure by Contractor to maintain a safe work environment;
- (xi.) improper or inaccurate reporting of job progress; and
- (xii.) failure by Contractor to leave worksite in a clean and orderly manner.

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

- (a.) TFC's removal of one or more facilities from the scope of this Contract; and/or
- (b.) TFC's termination of this Contract.

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 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: TFC, in its sole discretion.

- (a.) TFC's removal of one or more facilities from the scope of this Contract;
- (b.) 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
- (c.) TFC's termination of this Contract.

2.6. **NO LIABILITY UPON TERMINATION.** If this Contract is terminated for any reason, TFC and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260.

### III. CONSIDERATION.

3.1. **CONTRACT LIMIT AND FEES AND EXPENSES.** (a.) The total amount of this Contract shall not exceed the sum of Three Hundred Twenty Thousand One Hundred Fifty Six and 48/100 Dollars (\$320,156.48), this includes the total contract base fee of One Hundred Sixteen Thousand Eight Hundred Ninety Five and 92/100 Dollars (\$116,895.92) and Two Hundred Three Thousand Two Hundred Sixty and 56/100 Dollars (\$203,260.56) to cover any Additional Services, as defined in Section 3.3 below. Pricing fees shall 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.

3.2. **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 TFC's Contract Administrator. For large projects, partial payment may be allowed once per month on completed work with acceptance and approval of the Contract Administrator.

(b.) Contractor will be paid for work performed to the end of the preceding month, provided that the work required to be performed under the Contract shall have been fully and satisfactorily completed, accepted, and approved by TFC's Contract Administrator. Inspections shall not be considered to be complete and payable unless the completed, signed inspection form along with copies of service tickets have been submitted to and received by TFC.

(c.) Freight and shipping charges are not an allowable expense under this contract. Expedited shipping charges, with prior approval from the TFC Contract Administrator, may be allowed.

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

(e.) Contractor shall list any costs for required payment or performance bonds as a separate line item on the invoice.

3.3. **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 units 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.

4.1. **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. Service technicians must have a Universal EPA Refrigerant Certification.

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

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

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

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

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

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

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

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

## V. STATE FUNDING.

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

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

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

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

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

provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

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

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

6.4. **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 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.

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

## VII. CONTRACTOR'S RESPONSIBILITIES AND WARRANTIES.

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

7.2. **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 Occupational Safety and Health Administration (hereinafter referred to as "OSHA").

(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;
- (iv.) shorts; and.
- (v.) 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.

(e.) 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 daily, comb or brush before starting work and keep trimmed; and,
- (v.) be clean shaven or if facial hair is present, keep trimmed.

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

7.4. **PERFORMANCE WARRANTY.** All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and of local codes and ordinances and any other authority having lawful jurisdiction. Work performed under this Contract shall meet all applicable requirements of the latest revision of the NFPA 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.

7.5. **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 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 or his/her designated representative with all manufacturers' warranty documents within five (5) business days of completion of each project.

#### **VIII. INSURANCE, INDEMNIFICATION AND LEGAL OBLIGATIONS.**

8.1. **BONDS.** (a.) Prior to commencement of work under a Delivery Release issued 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 the Delivery Release amount is 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 the Delivery Release to guarantee the faithful performance of the work in accordance with the Contract. The performance bond shall be effective through Contractor's warranty period. 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 the Delivery Release amount is in excess of \$25,000.00. The payment bond is to be for the sum of the Delivery Release 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 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 – TFC 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 embossed 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).

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

(a.) Workers' Compensation and Employers' Liability coverage with minimum policy limits for employers' liability of \$100,000.00 bodily injury per accident, \$500,000.00 bodily injury disease policy limit and \$100,000.00 per disease, per employee. Workers' compensation insurance coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(46). Certification in writing from Contractor and subcontractors shall be provided to TFC in accordance with Texas Labor Code, Section 406.096.

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

(i.) blanket contractual liability coverage for liability assumed under the Contract;

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

(c.) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000.00 per accident for bodily injury and property damage. Alternate acceptable limits are \$250,000.00 bodily injury per person, \$500,000.00 bodily injury per accident and at least \$100,000.00 property damage liability per accident. The policy shall contain the following endorsements in favor of TFC:

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

(d.) 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 coverage's required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**8.3 INDEMNIFICATION AND LEGAL OBLIGATIONS CLAUSES. (a.) CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMERS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY**

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

(b.) 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.

(c.) CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, ANY MODIFICATION MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO TFC'S SPECIFIC INSTRUCTIONS, ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TFC, OR ANY USE OF THE PRODUCT OR SERVICE BY TFC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.

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

(e.) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, CONTRACTOR SHALL BE ENTIRELY

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

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

8.4. **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 AGREEMENT. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. (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, (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-INFRINGEMENT.

**8.5. TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE - INCLUDING INDEMNITY.** (a.) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. (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 AGREEMENT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**8.6. LEGAL OBLIGATIONS.** Contractor shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

#### **IX. CONTRACTOR GENERAL AFFIRMATIONS.**

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

give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

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

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

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

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

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

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

9.7. **EQUAL OPPORTUNITY**, Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, religion, age, sexual orientation or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including

apprenticeship. Contractor agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this non-discrimination article. Contractor shall include the above provisions in all subcontracts pertaining to the work.

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

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

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

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

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

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

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

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

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

## X. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

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

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

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

10.4. PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS. Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising

from the State's or Contractor's use of or acquisition of any services or other items provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify TFC of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without TFC's prior written approval. Contractor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

10.5. **ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS.** (a.) Effective September 1, 2006, all 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 of the 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" (<http://www.buyaccessible.gov>). Contractors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

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

- (i) withholding of income taxes, FICA or any other taxes or fees;
- (ii) industrial or workers compensation insurance coverage;
- (iii) participation in any group insurance plans available to employees of the State of Texas;

(iv) participation or contributions by the State of Texas to the State Employees Retirement System;

(v) accumulation of vacation leave or sick leave; or

(vi) unemployment compensation coverage provided by the State.

10.7. **DRUG FREE WORK PLACE.** Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law No. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Contractor, Contractor's employees, and Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

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

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

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

For Contractor:         Trane U.S. Inc.  
                                  9801 Metric Blvd., Suite 400  
                                  Austin, Texas 78757  
                                  Attention: Keith Brangan Jr.  
                                  Phone: (512) 485-5203  
                                  Fax: (512) 485-5220  
                                  Keith.branganjr@trane.com

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

10.10. **NAME AND ORGANIZATIONAL CHANGES.** (a.) Contractor must provide TFC with written notification of all name changes and organizational changes relating to Contractor including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change.

Contractor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for Contractor, Contractor shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Contract and Contractor shall supply the requested information within five (5) working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor or successor entity, as applicable, to maintain its status as a party to this Contract.

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

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

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

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

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

10.15. **LABOR ACTIVITY.** If any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against the Contractor at TFC's facility, which results in the curtailment or discontinuation of services performed herein, TFC shall have the right during said period to employ any means legally permissible to have the work performed.

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

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

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

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

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

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

TEXAS FACILITIES COMMISSION

  
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Kay Molina

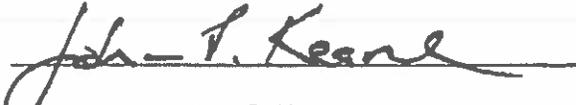
General Counsel

Date of execution: 11/15/16

DIR. TB

DED Moran

TRANE US INC

  
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Printed Name: John P. Keane

Title: Senior Contract Manager

Date of execution: 11/8/2016

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**EXHIBIT A**

**TFC CONTRACT NO. 17-012-000**

**BUILDING AND EQUIPMENT LIST**

**TFC BUILDING AND EQUIPMENT LISTING - TRANE**

Building	Asset Tag	Install Date	Manufacturer	Model #	Serial #	Tonnage	Refrigerant
Central Power Plant (CPP) 201 E. 14th St. Austin, TX 78701	Chiller #1	2001	Trane	CVH41470	L01K11227	1470	123
	Chiller #2	2010	Trane	CVHF1470	L10E02655	1470	123
	Chiller #3	2012	Trane	CVHF NTON 1470	L13800584	1470	123
	Chiller #4	1994	Trane	CVHF1280	L94B01491	1280	123
Central Services Building (CSB) 1711 San Jacinto Blvd. Austin, TX 78701	Chiller #1	2001	Trane	RTHC182FOH082L3B2LFVQU00	U01E03667	200	134A
Robert E. Johnson (REJ) 1501 N. Congress Ave. Austin, TX 78701	Chiller #1	1998	Trane	CVHF055	L98D02613	550	123
	Chiller #2	1998	Trane	CVHF055	L98D02622	550	123
	Chiller #3	1998	Trane	CVHF049	L03J06970	485	123
	Chiller #4	1998	Trane	RTWAO704X001C3DOW	U98D09375	70	R22
Stephen F. Austin (SFA) 1700 N. Congress Ave. Austin, TX 78701	Chiller #1	2009	Trane	CVHF1470	L09A06036	1470	123
	Chiller #2	2003	Trane	CVHF1470	L03D04417	1470	123
	Chiller #3	2009	Trane	CVHF1470	L08M05710	1470	123
E.O. Thompson (THO) 920 Colorado St. Austin, TX 78701	Chiller #1	2003	Trane	RTWA1004XE01D3DOWFT	U03D09933	100	R22
	Chiller #2	2003	Trane	RTWA1004XE01D3DOWFT	U03D09934	100	R22
William P. Clements (WPC) 300 W. 15th St. Austin, TX 78701	Chiller #1	1985	Trane	CVHE-080F	L85D27519	800	R11
	Chiller #2	1985	Trane	CVHE-080F	L85D27520	800	R11
TX School for the Deaf Plant (TSD Plant) 1102 S. Congress Ave. Austin, TX 78704	Chiller #1	1994	Trane	CVHF091FAF	L94A00051	850	R123
	Chiller #2	1994	Trane	CVHF091FDF	L94A00392	850	R123
	Chiller #3	1994	Trane	RFCXTHA255	U93M09430	250	R22

Exhibit A

Chiller Maintenance and Repair Services, Austin, TX

Building	Asset Tag	Instal Date	Manufacturer	Model #	Serial #	Tonnage	Refrigerant
Dept. of Health New Plant (DHNP) 1100 W. 49th St. Austin, TX 78751	Chiller #1	1999	Trane	CVH910	L00K05037	910	R123
	Chiller #2	1999	Trane	CVH910	L00K05048	910	R123
TCEQ Building A (P35A) 12100 N. Interstate 35 Austin, TX 78753	Chiller #1	2015	Trane	RTHDUC2FXJOUAF2A	U13M08110	308.2	134A
	Chiller #2	2000	Trane	RTAA4004XT03A3DOBG	U00D08162	400	R22

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**EXHIBIT B**

**TFC CONTRACT NO. 17-012-000**

**COMPENSATION AND FEES**

Chiller Maintenance and Repair Services, Austin, TX  
RFP 303-5-01379 ADDENDUM #2

Respondent Name: Trane U.S. Inc.

**COMPENSATION AND FEES – ADDENDUM #2**

Building	Manufacturer	Model #	Annual Chiller Maintenance	10-Year Chiller Maintenance	Chiller Oil Change
<b>BHB</b>					
Chiller #1	Daiken Applied	WME0500S	\$ 3,500.00		
Chiller #2	Daiken Applied	WMC150DC	\$ 3,500.00		
Chiller #3	Daiken Applied	WME0500S	\$ 3,500.00		
<b>CPP</b>					
Chiller #1	Trane	CVH41470	\$ 4,870.00	\$ 57,590.00	\$ 1,569.43
Chiller #2	Trane	CVHF1470	\$ 5,556.00	\$ 57,590.00	\$ 1,569.43
Chiller #3	Trane	CVHF 1470	\$ 5,465.00	\$ 57,590.00	\$ 1,569.43
Chiller #4	Trane	CVHF1280	\$ 4,500.00	\$ 57,282.00	\$ 1,334.64
<b>CSB</b>					
Chiller #1	Trane	RTHC1B2FOHOB2L3B2LFVQU00	\$ 2,845.00	\$ 55,960.00	\$ 1,098.88
Chiller #2	York	YS CA CA S2 CH ES	\$ 2,236.00	\$ 10,987.44	\$ 1,178.16
<b>QSP</b>					
Chiller #1	York	YT L3 LE L2 -CSDTM	\$ 4,056.00		\$ 1,826.50
Chiller #2	York	YT L3 LE E2 -CSD	\$ 4,056.00		\$ 1,826.50
<b>JER</b>					
Chiller #2 Back-up Only	Carrier	30-11k-060-630	REMOVED	REMOVED	REMOVED
<b>JHW</b>					
Chiller #1	York	YKJQJSP8-CSGS	\$ 4,056.00		\$ 4,701.68
Chiller #2	York	YKJQJSP8-CSGS	\$ 4,056.00		\$ 4,701.68
Chiller #3	York	YKJQJSP8-CSGS	\$ 4,056.00		\$ 4,701.68

Chiller Maintenance and Repair Services, Austin, TX  
RFP 303-5-01379 ADDENDUM #2

Building	Manufacturer	Model #	Annual Chiller Maintenance	10-Year Chiller Maintenance	Chiller Oil Change
<b>REJ</b>					
Chiller #1	Trane	CVHFO55	\$ 4,250 00	\$ 54,365 00	\$ 1,569 43
Chiller #2	Trane	CVHFO55	\$ 4,250 00	\$ 54,365 00	\$ 1,569 43
Chiller #3	Trane	CVHF049	\$ 4,250 00	\$ 54,858 00	\$ 1,569 43
Chiller #4	Trane	RTWAO704X001C3DOW	\$ 2,065 00	\$ 33,813 89	\$ 853 53
<b>SFA</b>					
Chiller #1	Trane	CVHF1470	\$ 5,555 00	\$ 57,590 00	\$ 1,569 43
Chiller #2	Trane	CVHF1470	\$ 4,870 00	\$ 57,590 00	\$ 1,569 43
Chiller #3	Trane	CVHF1470	\$ 5,100 00	\$ 57,590 00	\$ 1,569 43
<b>THO</b>					
Chiller #1	Trane	RTWA1004XE01D3DOWFT	\$ 2,350 00	\$ 35,136 18	\$ 921 66
Chiller #2	Trane	RTWA1004XE01D3DOWFT	\$ 2,350 00	\$ 35,136 18	\$ 921 66
<b>WPC</b>					
Chiller #1	Trane	CVHE-080F	\$ 3,638 00	\$ 56,071 00	\$ 1,334 64
Chiller #2	Trane	CVHE-080F	\$ 3,638 00	\$ 56,071 00	\$ 1,334 64
Chiller #3	York	YTD1E3C3CMFS	REMOVED	REMOVED	REMOVED
<b>WPH T1</b>					
Chiller #1	Dunham-Bush	1212BHF	\$ 3,700 00	\$ 140,000 00	\$ 1,344 48
Chiller #2	Dunham-Bush	1212BHF	\$ 3,700 00	\$ 140,000 00	\$ 1,344 48
<b>WPH T2</b>					
Chiller #1	Dunham-Bush	1212BHF	\$ 3,700 00	\$ 140,000 00	\$ 1,344 48
<b>WPH T3</b>					
Chiller #1	Dunham-Bush	1210BHF	\$ 3,700 00	\$ 140,000 00	\$ 1,344 48
Chiller #2	Dunham-Bush	1210BHF	\$ 3,700 00	\$ 140,000 00	\$ 1,344 48

Chiller Maintenance and Repair Services, Austin, TX  
RFP 303-5-01379 ADDENDUM #2

Building TSD PLANT	Manufacturer	Model #	Annual Chiller Maintenance	10-Year Chiller Maintenance	Chiller Oil Change
Chiller #1	Trane	CVHF091FAF	\$ 4,410.00	\$ 55,767.00	\$ 1,334.64
Chiller #2	Trane	CVHF091FDF	\$ 4,410.00	\$ 55,767.00	\$ 1,334.64
Chiller #3	Trane	RFCXTHA255	\$ 2,105.00	\$ 61,333.55	\$ 829.73
<b>TDH DHNP</b>					
Chiller #1	Trane 20	CVH4910	\$ 3,757.00	\$ 55,767.00	\$ 1,334.64
Chiller #2	Trane 21	CVH4910	\$ 3,757.00	\$ 55,767.00	\$ 1,334.64
<b>TCEQ A</b>					
Chiller #1	Trane	R7HA300FCWOLDUI2LFNNVOGU	\$ 2,997.00	\$ 45,566.00	\$ 1,815.11
<b>RDM</b>					
Chiller #1	Daikin Applied	WMC250DC	\$ 3,500.00		
Chiller #2	Daikin Applied	WMC250DC	\$ 3,500.00		

**TEMPORARY CHILLER RENTAL – Rental Fees shall include mobilization, connection/disconnection fees, and up to 100 ft. of any required connections or piping.**

TEMPORARY CHILLER SIZE	WEEKLY RATE	MONTHLY RATE
<b>Centrifugal Chiller Rental</b>		
000 – 100 Ton	\$ 10,824.45	\$ 15,941.36
101 – 250 Ton	\$ 11,497.83	\$ 18,021.48
251 – 500 Ton	\$ 12,329.98	\$ 20,517.94
501 – 750 Ton	\$ 15,097.31	\$ 26,387.94
751 – 1000 Ton	\$ 16,509.47	\$ 30,624.42
1001 – 1250 Ton	\$ 19,191.29	\$ 38,669.89
1251 – 1500 Ton	\$ 20,603.46	\$ 42,916.37
<b>Centrifugal Chiller and Cooling Tower</b>		
000 – 100 Ton	\$ 13,658.37	\$ 22,071.12
101 – 250 Ton	\$ 14,626.99	\$ 24,976.96
251 – 500 Ton	\$ 16,191.09	\$ 29,669.25
501 – 750 Ton	\$ 17,506.67	\$ 30,560.02
751 – 1000 Ton	\$ 23,151.19	\$ 47,493.56
1001 – 1250 Ton	\$ 27,830.13	\$ 61,530.30
1251 – 1500 Ton	\$ 29,890.27	\$ 67,710.81

Air Cooled Chillers		
000 – 100 Ton	\$ 8,304.60	\$ 12,121.80
101 – 250 Ton	\$ 9,781.73	\$ 16,553.21
251 – 500 Ton	\$ 12,405.84	\$ 24,425.54
501 – 750 Ton	\$ 15,024.40	\$ 32,282.40
751 – 1000 Ton	\$ 17,721.81	\$ 40,373.42
1001 – 1250 Ton	\$ 18,573.92	\$ 47,721.77
1251 – 1500 Ton	\$ 19,946.77	\$ 51,340.32
ADDITIONAL CHARGES		
Additional Hose/Piping – 50 Ft.	\$ 74.65	\$ 222.65

**ADDITIONAL REPAIR AND MAINTENANCE SERVICES**

The following prices are for services that are not included in the normal preventative maintenance of chillers above, but would be incurred as a result of unusual circumstances requiring additional parts, components, materials, and labor.

**Labor:**

Straight time* hourly rate per qualified service technician:	\$ 115.00 / Hour
Straight time* hourly rate per service technician helper:	\$ 76.00 / Hour
Overtime** hourly rate per qualified service technician:	\$ 161.00 / Hour
Overtime** hourly rate per service technician helper:	\$ 106.00 / Hour

**Materials:**

Material Markup: Contractor shall invoice at MSRP/List\*\*\* minus 20 %

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

**Subcontracted Services Mark-up:**

Vendor shall invoice at cost\*\*\*\* plus 25 % mark-up

**Payment and Performance Bonds (As Required):**

Contractor shall invoice at cost\*\*\*\*.

\*Normal hours are defined as 7:30 AM – 6:00 PM Monday through Friday.

\*\*Overtime is defined as any hours that fall outside of Normal Hours.

\*\*\*MSRP/List – TFC reserves the right to request from Contractor any published or printed catalog that reflects MSRP/List price for verification purposes.

\*\*\*\*Cost – Cost is defined as the actual invoiced amount for goods/services procured by Contractor for services utilized under this Contract. Invoices for materials and/or subcontractor services may be requested by TFC staff for verification purposes.

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**EXHIBIT C**

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**TFC CONTRACT NO. 17-012-000**

**CRIMINAL BACKGROUND CHECKS AND APPLICATION  
GUIDELINES**

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

**TEXAS FACILITIES COMMISSION**  
**CRIMINAL BACKGROUND CHECKS AND APPLICATION**  
**GUIDELINES**

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

**I. CRIMINAL HISTORY CRITERIA**

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

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

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

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

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

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

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

### II. CRIMINAL BACKGROUND PROCESS

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

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

### III. CRIMINAL HISTORY ERROR RESOLUTION

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

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

[http://txdps.state.tx.us/administration/crime\\_records/pages/errorresolution.htm](http://txdps.state.tx.us/administration/crime_records/pages/errorresolution.htm).

### IV. TFC CONTACTS

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

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

**Tommy Oates, Deputy Executive Director**

**Office: 512-463-3057**

**Cell: 512-463-3376**

**Email: [tommy.oates@tfc.state.tx.us](mailto:tommy.oates@tfc.state.tx.us)**

**Shawn Finley, Manager**

**Office: 512-463-1668**

**Cell: 512-848-3111**

**Email: [shawn.finley@tfc.state.tx.us](mailto:shawn.finley@tfc.state.tx.us)**

**Sharee Johns, Team Lead**

**Office: 512-463-6157**

**Cell: 512-961-2928**

**Email: [sharee.john@tfc.state.tx.us](mailto:sharee.john@tfc.state.tx.us)**

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

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

The general process for electronic fingerprinting is:

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

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

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

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**ATTACHMENT B**

**IdentoGO**

By MorphoTrust USA

Texas Fingerprint Service Code Form

Facilities Commission

**Service Name: Facilities Commission**

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

**11G6ZN**

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

**Background Check Waiver**

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

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

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

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**EXHIBIT D**

**TFC CONTRACT NO. 17-012-000**

**TFC BOND FORMS**

### 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 73<sup>rd</sup> 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 \_\_\_\_\_

### 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 73<sup>rd</sup> 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 \_\_\_\_\_

**EXHIBIT E**

**TFC CONTRACT NO. 17-012-000**

**HUB SUBCONTRACTING PLAN**



# HUB Subcontracting Plan (HSP)

## QUICK CHECKLIST

Rev 10/16

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 services, 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.



# HUB Subcontracting Plan (HSP)

Rev 10/16

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

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

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

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

### -- Agency Special Instructions/Additional Requirements --

In accordance with 34 TAC §20.14(d)(1)(D)(ii) 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: \_\_\_\_\_

(Form 44/1111)

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 §20.11, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

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

- Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b of this SECTION and continue to Item c of this SECTION.)
- No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods 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 <u>do not</u> have a "continuous contract" in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a "continuous contract" in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

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

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

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

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

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

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

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a "continuous contract" in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a "continuous contract" in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

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





# HSP Good Faith Effort - Method B (Attachment B)

Rev 10/10

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-qfe-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://mycoa.coa.state.tx.us/oaascmblsearch/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 <small>(Do not enter Social Security Numbers)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - 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/hubresources.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 <small>(mm/dd/yyyy)</small>	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

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

Rev 10/18

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://mycna.cpa.state.tx.us/masscmbsearch/index.jsq>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB <input type="checkbox"/> - Yes <input type="checkbox"/> - No	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - 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.



# HUB Subcontracting Opportunity Notification Form

Rev 10/16

In accordance with Texas Gov'l 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, §20.14 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, §20.11(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 \_\_\_\_\_ on \_\_\_\_\_  
Central Time Date (mm/dd/yyyy)

*In accordance with 34 TAC §20.14, 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, §20.11(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 E-1**

**TFC CONTRACT NO. 17-012-000**

**HSP PROGRESS ASSESSMENT REPORT**

