CONTRACT
FOR
GROUNDS MAINTENANCE SERVICES
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
VALLEYCREST LANDSCAPE MAINTENANCE, INC.

The Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Blvd., Austin, Texas 78701 and ValleyCrest Landscape Maintenance, Inc. (hereinafter referred to as "Contractor"), located at 12909 Dessau Road, Austin, Texas 78754 enter into the following contract for grounds maintenance services (hereinafter referred to as the "Contract") pursuant to TEX. GOV'T CODE ANN. Ch. 2165 (Vernon 2008 & Supp. 2014).

I. STATEMENT OF WORK.

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

1.02. **CONTRACT ADMINISTRATOR.** (a.) TFC shall designate a "Contract Administrator" for this Contract who will serve as the point of contact between TFC and Contractor. The instructions of the Contract Administrator and/or the Contract Administrator's designated representative (hereinafter collectively the "Contract Administrator") are to be strictly and promptly followed by Contractor at all times. TFC's Contract Administrator is to have free access to Contractor's materials and work product at all times for inspection and audit. Contractor is to afford the Contract Administrator all necessary assistance during those inspections and/or audits. The Contract Administrator will decide any and all questions that may arise as to the quality and acceptability of chemicals, supplies, tools, and equipment furnished, as well as the manner of performance, the rate of progress of the work, and the results of the work performed.

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

performed in accordance with the Contract, or to exercise any remedies, shall not be deemed an acceptance or a waiver of TFC's right to full performance of the Contract. However, the Contract Administrator does not have any express or implied authority to vary or amend the terms of the Contract or to waive strict performance of the terms or conditions of the Contract.

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

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

The following exceptions to the requirements in this Section 1.03(a.) are as follows. Line Items are those depicted in Exhibit A – Property List, Compensation and Fees:

(i.) Line Item 6 = 18 visits per year
(ii.) Line Item 22 = 26 visits per year
(iii.) Line Item 24 = 6 visits per year
(iv.) Line Item 25 = 6 visits per year
(v.) Line Item 26 = 18 visits per year
(vi.) Line Item 29 = 12 visits per year
(vii.) Line Item 30 = 26 visits per year

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c.) **TREES.** Primary pruning up to eight (8) feet on trees shall be performed during the dormant season. All pruning cuts shall be made to lateral branches, buds and be cut flush with the trunk. All suckers up to eight (8) feet high will be removed on each visit. Damaged trees, or those that constitute a health or safety hazard, shall be pruned any time of the year as required. All dead wood shall be pruned, as needed. Oaks shall only be pruned between

December 15th to February 15th and July 15th to August 15th of each year. Tree wound dressing shall be applied immediately at time of pruning to all oaks or as determined by the TFC Contract Administrator. All branches trimmed by Contractor shall be chipped for mulch. Major tree trimming or pruning above eight (8) feet is excluded under this Contract. All pruning shall be in accordance with applicable standards and codes.

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

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

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

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

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

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

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

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

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

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

(i) building name;

(ii) TFC work order number;

(iii) name of Contractor personnel performing the work;

(iv) trade category of person performing the work;

(v) number of hours worked; and,

(vi) narrative description of the completed services.

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

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

(a) building name;

(b) TFC work order number;

(c) name of Contractor personnel performing the work;

(d) trade category of person performing the work;

(e) number of hours worked; and,

(f) narrative description of the completed services.

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

(a) delayed start;

(b) use of alternative fuel equipment;

(c) re-scheduling services; and,

(d) by complying with all state and federal regulations

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

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

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

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

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

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

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

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

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

II. TERM.

2.01. **CONTRACT AWARD.** (a.) This Contract shall be effective as of September 1, 2015 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 set forth below. This Contract may be renewed for one (1) additional two (2) year period, provided that renewal is executed by written amendment to this agreement prior to expiration of the current contract term. Any renewals shall be at the same terms and conditions, plus any approved changes.

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

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

The following exception to the requirements in this Section 2.02 is as follows: for line item 31 depicted in Exhibit A – Property List, Compensation and Fees, work shall be performed on the weekend between the hours of 7:00AM to 7:00PM at the Texas Commission of Environmental Quality (TCEQ). Work may also be performed at hours other than those listed above for TCEQ, at no additional charge, at the direction of the Contract Administrator.

2.03. **TERMINATION.** (a.) Termination with Default. TFC may terminate this Contract immediately for default by providing written notice to Contractor of such termination if the Contractor fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Contract. In the event of abandonment or default, Contractor will be responsible for paying damages to TFC, including but not limited to, the cost

to re-solicit this Contract and any consequential damages to the State of Texas or TFC resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the scope of work is significantly changed.

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

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

(d.) Termination by Contractor. Contractor may terminate the Contract upon providing sixty (60) days' written notice to TFC. In the event of termination by Contractor, Contractor shall be governed by the terms and conditions of this Contract, and shall perform the acts outlined in Section 2.03(c.) above. Contractor will be held responsible for additional cost incurred from the termination of this Contract.

2.04. <u>UNSATISFACTORY PERFORMANCE.</u> (a) If Contractor fails to maintain an acceptable level of service, or if in the judgment of the Contract Administrator, Contractor's methods are not adequate to ensure completion of all required services per the allotted schedules, the Contract Administrator may direct Contractor, at no additional cost to TFC, to revise work schedules or manpower/man-hours to ensure completion of the services. Failure to perform any of the obligations in this Contract shall be considered nonperformance of services and may result in informal corrective actions, formal corrective action plans, withholding of payment, removal of a building(s) and/or termination of this Contract.

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

(i.) repeated poor or unacceptable performance of work;

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

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

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

2.05. **CORRECTIVE ACTION PLAN.** (a.) If TFC identifies one or more instances of Contractor's unsatisfactory performance, based on any of the circumstances set forth in Section 2.04 above or otherwise based on Contractor's obligations under this Contract, the Contract Administrator may request a corrective action plan ("Corrective Action Plan") from Contractor by notifying Contractor in writing of the issue(s) which constitute unsatisfactory performance, and direct Contractor to provide a written Corrective Action Plan.

(b.) Contractor shall deliver a Corrective Action Plan within ten (10) business days of Contract Administrator's notification, and such plan shall be subject to written approval by the Contract Administrator. The Corrective Action Plan shall address how Contractor will correct the instances of unsatisfactory performance identified by TFC, and provide that Contractor shall, unless otherwise approved in advance by the Contract Administrator, complete all actions set forth in the Corrective Action Plan no later than thirty (30) calendar days following Contractor Administrator's approval of the Plan.

(c.) Failure to correct all identified elements of unsatisfactory performance included in the notice requesting the Corrective Action Plan, within the time as set forth in this paragraph, shall entitle TFC to avail itself of one or more of the following remedies at TFC's sole discretion:

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

(ii.) TFC's termination of this Contract.

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

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

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

(iii.) TFC's termination of this Contract.

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

III. CONSIDERATION.

3.01. **CONTRACT LIMIT AND FEES AND EXPENSES.** The total amount of fees to be paid under this Contract shall not exceed the sum of One Hundred Twenty Two Thousand Two Hundred Eight and 22/100 Dollars ($122,208.22). Pricing fees shall be invoiced in accordance with Exhibit A – Property List, Compensation and Fees, attached hereto and incorporated herein for all purposes. Any changes to the not-to-exceed amount of the Contract or pricing fees set forth in Exhibit A – Property List, Compensation and Fees shall be submitted to TFC for review and shall be approved by amendment to this Contract.

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

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

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

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

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

IV. CONTRACTOR PERSONNEL.

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

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

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

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

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

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

4.06. **TRAINING.** (a) Contractor shall have an ongoing training program to provide each employee used in the performance of work under this Contract with adequate training to perform

the work competently as defined in the scope of work. Contractor must agree to modify the program if requested by TFC. The training program shall remain the sole and exclusive property of Contractor.

4.07. **QUARTERLY EMPLOYEE REPORT.** Within five (5) working days of the end of each State fiscal year quarter (November, February, May, and August), Contractor shall provide to the

Contract Administrator, a report of the number of full-time and part-time employees employed as of the last working day of the State fiscal year quarter.

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

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

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

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

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

V. STATE FUNDING.

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

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

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

6.01. **SUPPORTING DOCUMENTS, RETENTION; RIGHT TO AUDIT; INDEPENDENT AUDITS.** (a.) Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of

the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Contract. Contractor and any subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TFC and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

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

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

(i.) confidential by law;

(ii.) marked or designated "confidential" (or words to that effect) by TFC; or,

(iii.) information that Contractor is otherwise required to keep confidential by this Contract.

6.03. **PUBLIC RECORDS.** Notwithstanding any provisions of this Contract to the contrary, Contractor understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552. If contacted by TFC, Contractor shall cooperate with TFC in the production of documents responsive to the request. Contractor agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. Contractor may request that TFC seek an opinion from the Office of the Texas Attorney General. However, the final decision whether to seek a ruling from the Office of the Texas Attorney General will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, Contractor shall notify TFC's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Contract and/or any amendment to this Contract. This Contract and/or any amendment to this Contract and all data and other information generated or otherwise obtained in its performance is subject to the Texas

Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

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

VII. CONTRACTOR RESPONSIBILITIES AND WARRANTIES.

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

7.02. **PERFORMANCE STANDARDS.** All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and shall comply with all federal, state, and local laws and rules relating to landscaping and pest control, parking and rights-of-way within properties.

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

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

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

VIII. INSURANCE, INDEMNIFICATION AND LEGAL OBLIGATIONS.

8.01. **INSURANCE.** Prior to the commencement of work under this Contract, Contractor agrees to carry and maintain insurance in the following types and amounts for the duration of this Contract, to furnish certificates of insurance, and make available copies of policy declaration pages and policy endorsements as evidence thereof:

(a.) Workers' Compensation and Employers' Liability coverage with minimum policy limits for employers' liability of $250,000.00 bodily injury per accident, $500,000.00 bodily injury disease policy limit and $250,000.00 per disease, per employee. Workers' compensation insurance coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(44). Certification in writing from Contractor and subcontractors shall be provided to TFC in accordance with Texas Labor Code, Section 406.096.

(b.) Commercial General Liability with a combined single limit of $500,000.00 per occurrence for coverage AB&C including products/completed operations, where appropriate, with a separate aggregate of $1,000,000.00. The policy shall contain the following provisions:

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

(ii.) Independent contractors' coverage;

(iii.) State of Texas, TFC, its officials, directors, employees, representatives and volunteers must be listed as additional insureds;

(iv.) Thirty (30) day Notice of Cancellation in favor of TFC; and,

(v.) Waiver of Transfer Right of Recovery Against Others in favor of TFC.

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

(i.) Waiver of Subrogation endorsement;

(ii.) Thirty (30) day Notice of Cancellation endorsement; and,

(iii.) Additional Insured endorsement.

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

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

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

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

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

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

(i.) Naming TFC, P.O. Box 13047, Austin, Texas 78711 as additional insured (except Workers' Compensation).

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

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

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

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

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

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

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

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

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

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

IX. CONTRACTOR GENERAL AFFIRMATIONS.

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

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

9.02. **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.

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

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

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

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

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

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

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

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

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

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

9.13. **IMMIGRATION REFORM.** The Immigration Reform and Control Act of 1986, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by its contractors and subcontractors. Contractor shall

not place any employee of Contractor at a worksite, nor shall Contractor permit any employees, nor any employee of its subcontractor to perform any work on behalf of, or for the benefit of, TFC without first ensuring said employee's authorization to lawfully work in the United States.

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

X. MISCELLANEOUS PROVISIONS.

10.01. **ASSIGNMENT AND SUBCONTRACTS.** (a.) Contractor shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Contract without the prior written consent of TFC, provided, however, that consent shall not be required to assign this Agreement to any company which controls, is controlled by, or is under common control with Contractor or in connection with assignment to an affiliate or pursuant to a merger, sale of all or substantially all of its assets or equity securities, consolidation, change of control or corporate reorganization.

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

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

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

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

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

10.02. **HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS).** In accordance with State law, it is TFC's policy to assist HUBs, whether minority or women owned, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors

to assist in fulfilling Contractor's obligations with TFC. If Contractor subcontracts with others for some or all of the services to be performed under this Contract, Contractor shall comply with all HUB requirements pursuant to Texas Government Code, Chapter 2161 as described in Exhibit D – HUB Subcontracting Plan, attached hereto and incorporated herein for all purposes. In addition to information required by Section 10.01 above, Contractor shall provide TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on Exhibit D-1 – HSP Progress Assessment Report, attached hereto and incorporated herein for all purposes. PARs shall be submitted monthly with each invoice and are a condition of payment.

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

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

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

(b.) If applicable, Contractor shall provide the Texas Department of Information Resources (DIR) with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration

"Buy Accessible Wizard" (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/.

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

(a.) withholding of income taxes, FICA or any other taxes or fees;

(b.) industrial or workers compensation insurance coverage;

(c.) participation in any group insurance plans available to employees of the State of Texas;

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

(e.) accumulation of vacation leave or sick leave; or

(f.) unemployment compensation coverage provided by the State.

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

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

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

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

For Contractor: ValleyCrest Landscape Maintenance, Inc.
12909 Dessau Road
Austin, TX 78754
Attn: Trey Reilly
Phone: (512) 420-7902
Email: treilly@valleycrest.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.

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	**VALLEYCREST LANDSCAPE MAINTENANCE**
Sign:	Sign:
Harvey ~~Hilderbran~~	Name: Wei-Chih Roebie Huang
Executive Director	Title: Branch Manager
Date: 8/26/15	Date: 8/26/15

Dir.

D.E.D.

NRG G.C.

EXHIBIT A

TFC CONTRACT NO. 16-011-000

PROPERTY LIST, COMPENSATION AND FEES

EXHIBIT A-1

TFC CONTRACT NO. 16-011-000

IRRIGATION SYSTEMS

EXHIBIT B

TFC CONTRACT NO. 16-011-000

SERVICE REPORT

EXHIBIT C

TFC CONTRACT NO. 16-011-000

CRIMINAL BACKGROUND CHECKS AND APPLICATION GUIDELINES

EXHIBIT D

TFC CONTRACT NO. 16-011-000

HUB SUBCONTRACTING PLAN

EXHIBIT D-1

TFC CONTRACT NO. 16-011-000

HSP PROGRESS ASSESSMENT REPORT