

## CONTRACT FOR LAWN AND LANDSCAPING SERVICES

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1. Parties. The parties to this contract are the [AGENCY NAME] (hereinafter “Agency”) and [CONTRACTOR NAME] (hereinafter “Contractor”).
2. Purpose. The purpose of this contract is for the Agency to engage Contractor to provide lawn and landscaping services for the Agency.
3. Scope of Services. Contractor will perform and complete in a timely and satisfactory manner the services described in Exhibit “A”, captioned “Scope of Services”, which is attached hereto and made a part hereof by reference. The scope of services is from IFB No. 2019-03, Preapproved List of Vendors for Lawn and Landscaping Services, which is incorporated herein by reference. Contractor is one of the preapproved vendors selected through the above referenced IFB for the [REGION NAME] Region.
4. General Terms and Conditions. This contract is hereby made subject to the terms and conditions included in Exhibit “B”, captioned “Additional Terms and Conditions”, which is attached hereto and made a part hereof by reference.
5. Consideration. As consideration for the performance of the services referenced in Exhibit “A”, the Agency agrees to compensate Contractor as provided in Exhibit “C”, captioned “Compensation”, which is attached hereto and made a part hereof by reference.
6. Period of Performance. This contract will become effective for the period beginning [add date] and ending on [add date], upon the approval and signature of the parties hereto. The Agency has the option to renew the contract as long as the contract was entered into on or before July 9, 2022 and the period of performance ends no later than June 30, 2024, as set by IFB No. 2019-03. Renewals must be approved by the PPRB.
7. Method of Payment. Contractor agrees to accept payments referenced in Paragraph 5, “Consideration”, to be paid as billed by Contractor, upon review and approval by Agency. Contractor agrees to submit invoices to the Agency that contain a detailed account of each billing. The final invoice is to be submitted no later than [add date]. Contractor is classified as an independent contractor and not a contractual employee of the Agency. As such, any compensation due and payable to Contractor will be paid as gross amounts. Contractor invoices shall be submitted to the Agency as set forth in Paragraph 21.

8. Applicable Law. The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of law provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.
9. Approval Clause. It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.
10. Availability of Funds. It is expressly understood and agreed that the obligation of the Agency to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Agency, the Agency shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
11. Representation Regarding Contingent Fees. Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.
12. Representation Regarding Gratuities. Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.
13. Compliance with Laws. Contractor understands that the Agency is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
14. Insurance.
  - a. Each successful bidder shall maintain insurance which, at a minimum, shall include the following types of insurance and coverage limits:
    - **Workers' Compensation** – as required by the State of Mississippi; and,

- **Comprehensive General or Commercial Liability** – at least \$500,000 each occurrence for bodily injury, personal injury, accidental death, and property damage with the *State of Mississippi* added as an additional insured.
- b. Each successful bidder and/or the carrier may be required to maintain the following types of insurance with coverage limits as identified and required by the Contracting Agency:
  - **Motor Vehicle Liability Insurance** covering all vehicles, owned or otherwise, used in the contract work with limits of at least \$500,000 per occurrence for injuries including accidental death to any person and subject to the same limit for each person for any one accident involving two or more person; and
  - **Motor Vehicle Property Damage Insurance** covering all property damage by vehicle with limits of \$250,000.
- c. All insurance policies will list the *State of Mississippi* as an additional insured and upon request, the Vendor will provide copies of any insurance documentation to the Contracting Agency.
- d. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Mississippi, meaning insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance.
- e. The Contracting Agency may reserve the right to request from carriers, certificates of insurance regarding the required coverage.
- f. **Agencies may require greater limits and will negotiate with Vendors regarding the same. THIS IS THE ONLY NEGOTIABLE TERM.**

15. Stop Work Order.

- a. *Order to Stop Work:* The Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either:
  - i. cancel the stop work order; or,
  - ii. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.
- b. *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires,

Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

- i. the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
  - ii. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- c. *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

16. Termination for Convenience.

- a. *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.
- b. *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

17. Termination for Default.

- a. *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- b. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
  - c. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
  - d. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled in fixed-price contracts, "Termination for Convenience". (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).
  - e. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (d) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
  - f. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
18. Termination Upon Bankruptcy. This contract may be terminated in whole or in part by [agency] upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

19. E-Payment. Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 *et seq.*
20. E-Verification. If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:
- a. termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
  - b. the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
  - c. both.

In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

21. Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.
22. Paymode. Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement.

Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

23. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.DFA.ms.gov>.
24. Trade Secrets, Commercial and Financial Information. It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.
25. Requirements Contract. During the period of the contract, Contractor shall provide all the service described in the contract. Contractor understands and agrees that this is a requirements contract and that the [agency] shall have no obligation to Contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the [agency] for the period of the contract. The amount is only an estimate and Contractor understands and agrees that the [agency] is under no obligation to Contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Contractor further understands and agrees that the [agency] may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.

In witness whereof, the parties hereto have affixed, on duplicate originals, their signatures on the date indicated below, after first being authorized so to do.

_____ DATE	By:	_____ [Contractor's Name (person signing)] [Contractor (name of company)]
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_____ DATE	By:	_____ [Director's Name] [Director's Title] [Agency Name]
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## **EXHIBIT “A”**

### **SCOPE OF SERVICES**

The Contractor will perform the following services upon request of the Agency in fulfillment of the purposes of this contract:

1. The Contractor shall furnish all labor, material, supplies, vehicles, equipment, tools, skills, and supervision necessary for the satisfactory completion of all lawn and landscaping services specified. The equipment and materials provided by the Contractor shall remain the property of the Contractor. Professional lawn and landscaping services include, but are not limited to, litter, leaves, and debris pick up and removal prior to mowing (cups, napkins, bags, etc.); branch removal and placement in designated location (Contracting Agency to haul away); lawn mowing of all grass areas; grass border trimming or edge trimming of lawn adjacent to curbs, sidewalks, pavement, driveways, parking areas, buildings, property lines, etc.; string trimming around posts, fences, trees, monuments, hedges, planter beds, mulched areas, etc.; blowing all trimmings, leaves, clippings, and debris off of roadway, sidewalks, paths, walkways, pavilions, parking lots, and other surfaces or areas (Do not blow onto streets or into storm drains); shrub bed maintenance (weed removal and removal of litter); pruning; and notify Contracting Agency of any safety issues and waste debris or large illegally dumped materials. Each time work is performed, the Contractor must check in and out with the Agency representative.
2. All lawn and landscaping services must be performed at the Contracting Agency’s convenience so as not to interrupt its normal operations. Services may be provided at a large range of facilities. Each agency may have more than one location in different regions of the State. Contractor may be required to perform the lawn and landscaping services outside of the Contracting Agencies’ regular business hours. Most agencies operate on a Monday – Friday, 8:00 AM to 5:00 PM business hours schedule. Contractor personnel may be required to sign-in and sign-out at state facilities. Security provisions for all state facilities must be strictly observed. All Contractor personnel must be uniformed or have visible identification at all times. Contractor personnel may be required to provide photographic identification for inspection upon entering state facilities and/or grounds. The Contractor is advised that for all state facilities, Contractor personnel shall strictly abide by all state policies and procedures at all times. Deviations from these policies by the Contractor or its personnel will not be tolerated and will be considered grounds for contract termination.
3. Detailed scope and specific requirements of the work required will be provided by the Contracting Agency when a Vendor on the PVL is selected for consideration with respect to a specific project or need. Such scope and requirements will include, but are not limited to, description of work activities, definition of particular deliverables, time frames, and budget parameters. All lawn and landscaping services must equal or exceed the specifications listed. The absence of detailed specifications or the omission of a detailed description shall be recognized as meaning that only the best commercial practices are to prevail and that only first quality equipment and workmanship are to be used.
4. Upon execution of a contract with a Contracting Agency, Vendors on the preapproved list shall, with respect to all lawn and landscaping services provided to a Contracting Agency:
  - a. Assign a Contractor Account Representative to work directly with the Contracting Agency Representative;
  - b. Maintain a sufficient pool of qualified Contractor personnel large enough to meet the Contracting



Agency's needs; included in the workforce shall be a competent supervisor or crew foreman. Contractor's supervisor or crew foreman shall have control of all work crews assigned to perform work under contracts resulting from this IFB; is expected to be on-site during times when work crews are assigned to perform, and shall report without delay any damage to Contracting Agency property. In addition to directing the daily activities of the Contractor's employees, the Contractor's supervisor or crew foreman shall be responsible for security issues with the lawn care staff, equipment, and supplies.

- c. Provide all labor, material, supplies, vehicles, equipment, tools, skills, and supervision necessary for the satisfactory completion of all lawn and landscaping services. The equipment and materials provided by the Contractor shall remain the property of the Contractor. All material, equipment, etc., used in the provision of these services shall comply with industry standards and all Occupational Safety Hazards Act (hereinafter "OSHA") safety requirements. Further, that all costs necessary to bring the material, equipment, etc. into compliance with aforementioned requirements shall be borne solely by the Vendor.
- d. Provide all lawn and landscaping services as needed and/or scheduled by the Contracting Agency during the hours specified by the Contracting Agency.
  - i. The Contractor and Contracting Agency shall develop a schedule of services. Failure to maintain the schedule without concurrence of the Contracting Agency shall be considered a service deficiency. Failure to deliver satisfactory services may be considered default. The service schedule may be changed to meet the Contracting Agency needs when mutually agreed upon by both parties. The Contractor shall coordinate with the Contracting Agency to schedule service times and dates. Schedule may be adjusted at any time by the Contracting Agency to better compliment the Contracting Agency's requirements and to accommodate unexpected schedule changes and/or added events. The Contracting Agency may suspend the schedule during periods of dry weather or wet weather conditions.
  - ii. If the Contractor fails to adhere to the lawn and landscaping service schedule, or if the Contractor fails to satisfactorily provide the prescribed service to all or any service area, the Contracting Agency will inform the Contractor and the Contractor shall complete corrective action within twenty-four (24) hours. No payment shall be made to the Contractor until all deficiencies have been corrected. If the Contractor exhibits a pattern of non-performance as shown by repeated deficiencies, the Contracting Agency may terminate the contract without further obligation to the Contractor. (Contracting Agency may elect to use the form included in the IFB as **Attachment H**, Lawn and Landscaping Services Contract Discrepancy Report.)
  - iii. The Contractor shall respond to all lawn and landscaping services requests within a twenty-four (24) hour period.
  - iv. Time between routine services shall vary based on precipitation patterns, temperature, and season. The frequency of mowing will be as needed and the schedule will vary at the Contracting Agency's discretion as a result (i.e., the frequency of mowing will decrease during a drought; while extra mowing may be required in wet periods).

5. Contractor shall maintain the grounds in a neat and clean condition. The grounds include all lawn areas,

under shrubs and trees, and all shrubbery or planter beds. Professional lawn and landscaping services include, but are not limited to:

- a. *Debris Removal Requirements.* Prior to mowing, the Contractor shall be responsible for the collection and removal of all litter and debris to include, but not limited to, any foreign material (cups, napkins, bags, etc.), garbage, leaves, dead branches, lumber, tires, appliances, and mattresses. The litter shall be legally discarded off-site at a reputable landfill/waste facility at the Contractor's expense. There shall be no debris and/or litter left at the curb. Any debris that requires special handling shall be collected and moved to a designated location or area identified by the Contracting Agency to haul away. Contractor shall notify the Contracting Agency of any safety issues and waste debris or large illegally dumped materials.
- b. *Mowing Requirements.* Contractor shall be responsible for the lawn mowing of all grass areas in accordance to the height standards set by the Contracting Agency. Contractor shall mow all grass areas to a continuous height, as dictated by rainfall accumulation and effect on growth. Mowing heights shall be measured with mower on a flat, paved surface. A high quality cut shall be provided using mowers with sharp cutting edges. Mowing shall be accomplished in such a manner as not to damage property, trees, shrubs, signs, or other appurtenances. Contractor shall remove minor obstacles or obstructions from areas to be mowed and replace when finished. When mowing around vehicles the Contractor shall mow in directions as to keep grass clippings off the vehicles. Deflective guards shall be in place during mower operations. Grass clippings thrown or blown onto paved areas must be removed. Grass clippings shall be removed when they are excessive, clump, or are such as to negatively impact the health of the lawn. Bunches and rows resulting from mowing shall be removed or raked out. Discharge from mowers does not need to be collected but it must be evenly distributed (i.e., no clumping or rows left by mowers).
- c. *Trimming and Edging Requirements.* All grass under and around trees, shrubs, picnic tables, fences, poles, posts, signage, walls, building foundations, monuments, rocks, sprinkler heads, valves, HAV systems, planter beds, mulched areas, property lines, asphalt or concrete paved areas, curbs, sidewalks, walkways, driveways, ramps, garbage rack enclosures, or any other permanent structure or obstacle shall be trimmed to match the height and appearance of the surrounding mowed grass. Vegetation in banks, ditches, or any other area not accessible by mower that is within grounds location being mowed must also be trimmed each time the area is mowed. Trimming may be accomplished by hand clipping or by using "weed eater" type equipment. Any trees, shrubs, or grass areas that are killed by trimming operation shall be replaced by the Contractor; and any structure damaged by the trimming operation shall be repaired or replaced by the Contractor. Edge adjacent to all asphalt or concrete paved areas, such as but not limited to entrances to buildings, curbs, sidewalks, walkways, and driveways. Trimming and edging operations shall be done the same day as grass cutting. Grass cutting shall not be considered complete until all trimming and edging operations are accomplished.
- d. *Blowing Requirements.* Contractor shall remove all trimmings, leaves, and clippings off of roadway, sidewalks, paths, walkways, entrance areas, pavilions, dumpster areas, parking lots, and other surfaces or areas. Grass clippings and trimmings shall be removed from sidewalks and other paved areas the same day the grass are cut. Contractor shall not blow litter, leaves, and other debris onto streets, adjacent streets, or into storm drains. Grass cutting shall not be considered complete until all blowing operations are accomplished.

- e. *Planter and Shrub Bed Maintenance.* Contractor shall ensure all mulched plant bed areas are consistently kept weed-free. Remove old mulch and replenish mulch as requested by the Contracting Agency. Contracting Agencies may occasionally purchase mulch for the Contractor to spread on annuals, perennials, or shrubs for the Contractor to plant.
  - f. *Pruning Requirements.* Before the growing season Contractor shall shape, prune, and trim small trees and ornamental plantings, including shrubs, and remove all debris to a designated location or area identified by the Contracting Agency to haul away. Contractor will trim and shape all shrubbery, prune dead, broken, and diseased wood or branches from small trees and ornamental plantings, and remove “sucker shoots” from all deciduous trees. There shall be no debris and/or litter left at the curb. While litter shall be legally discarded off-site at a reputable landfill/waste facility at the Contractor’s expense, any debris that requires special handling shall be collected and moved by the Contractor to a designated location or area identified by the Contracting Agency to haul away. Contractor shall notify the Contracting Agency of any safety issues and waste debris or large illegally dumped materials.
  - g. *Aeration Requirements.* All appropriate lawn areas shall be aerated once a year in the spring, excluding ball field areas and embankment areas.
  - h. *Weed/Disease Control.* Contractor shall remove grass and weeds from cracks in all sidewalks, curbs, parking areas, graveled areas, asphalt or concrete paved areas, and around the building perimeters. Fenced areas shall be cleaned of all weeds and vines.
  - i. *Lawn Maintenance.* Contractor shall fill in holes in the lawn with topsoil, reseed bare areas with seed that is appropriate to area seeded (sun, shade, or mixture thereof), apply initial watering for successful germination, and over seed all grassy areas once a year, in the fall, excluding ball field areas and embankment areas.
6. Be responsible for any damage to the facilities, building, interior, or their approaches in provision of lawn and landscaping services and shall be held for replacing or repairing any damage due to negligence on the part of the Contractor or Contractor personnel to any person(s) and/or property. The Contractor shall replace and repair any damage to any building or property, including but not limited to the replacement of any damaged finished surfaces (sidewalks, curbs, etc.) caused by performance of the lawn and landscaping services. Contracting Agency may withhold payment or make such deductions as deemed necessary to ensure reimbursement or replacement for loss or damage to property. Contractor shall take all necessary precautions to reduce or eliminate damage to irrigation system.
7. Abide by all State and/or agency policies, procedures, ordinances, and/or laws pertaining to the Contracting Agency’s operation at all times, including but not limited to the items listed below. Deviations from these policies by the Contractor or its personnel will not be tolerated and will be considered grounds for contract termination.
- a. All state facilities are non-smoking; the Contractor and its personnel must adhere to this requirement. The use of tobacco products is prohibited, except within designated smoking areas.
  - b. It is illegal to have in one’s possession any illegal drug or alcoholic beverage while on state property. Contractor staff shall not consume any illegal or illegally obtained drug or alcoholic beverage while on

duty.

- c. The Contractor's employees should refrain from using foul, abusive, or profane language on state property.
  - d. The Contractor's employees shall not flirt or fraternize with Agency personnel or any visitor at the Agency.
  - e. Contractor's employees shall not solicit or otherwise interfere with the work of the Contracting Agency employees.
  - f. Contractor's employees shall not engage in personal activities (such as, but not limited to texting, personal phone calls, reading magazines, etc.) while on the job, and shall comply with the Agency's restrictions regarding visitation with friends, family members or acquaintances while on the job.
  - g. The Contracting Agency reserves the right to inspect and search all Contractor personnel and/or vehicles anytime while on facility grounds.
  - h. Contractors are required to sign-in and sign-out at most state facilities. Security provisions for all state facilities must be strictly observed.
  - i. Contractor personnel may be required to provide photographic identification for inspection upon entering state facilities and/or grounds. Contractor identification badges, personal identification of the individual employee, and/or visitor badges shall be worn and clearly visible while on state property.
8. Perform all services provided in the contract between the Contractor and the Contracting Agency in accordance with customary and reasonable industry standards as well as in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices, and other agencies. The Contractor shall be responsible for the complete performance of all work; for the methods, means, and equipment used; and for furnishing all materials, tools, apparatus, and property of every description used in connection therewith. No statement within this IFB shall negate compliance with any applicable governing regulation. The absence of detail specifications or the omission of detail description shall be recognized as meaning that only the best commercial practices are to prevail and that only first quality materials and workmanship are to be used.
9. Contractors shall also:
- a. Administer and maintain all employment and payroll records, payroll processing, and payment of payroll checks and taxes, including the deductions required by state, federal, and local laws such as social security and withholding taxes;
  - b. Make all unemployment compensation contributions as required by federal and state law(s) and process claims as required;
  - c. Provide qualified, competent, well-trained, drug-free, and appropriately dressed contract worker(s) and/or employee(s) to perform the duties required; Proper dress shall include long pants (slacks),

and shirts or blouses with sleeves (short or long). Shirts and blouses shall remain buttoned. Clothing should be appropriate for weather conditions. Examples of clothing not considered appropriate shall include tank tops, shirts with no sleeves, shirts with cut out sleeves, shirts with sleeves rolled up to the shoulder, shorts, and flagging vests with no shirts.

- d. Accurately describe the job duties required to the contract worker(s) and/or employee(s);
- e. Properly manage and supervise its contract worker(s) and/or employee(s);
- f. Handle disciplinary matters promptly and prohibit contract worker(s) from approaching Contracting Agency staff for assistance with their own management or supervisory issues;
- g. Remove from duty any contract worker(s) and/or employee(s) not properly and fully performing his/her duties;
- h. Communicate with and provide all required and/or necessary reports to the Contracting Agency Representative;
- i. Ensure that the contract worker(s) and/or employee(s) report to work at the time and place specified by the Contracting Agency; and,
- j. Replace immediately, at no additional expense to the Contracting Agency, any contract worker(s) and/or employee(s) not performing satisfactorily.

10. The Contracting Agency shall:

- a. Extend all necessary cooperation in scheduling lawn and landscaping services.
- b. Designate a Contracting Agency representative who will be the point of contact for the Contracting Agency Representative during the contract period.
- c. Has the right to suspend the schedule during periods of dry weather or wet weather conditions in its sole discretion.

## **EXHIBIT “B”**

### **ADDITIONAL TERMS AND CONDITIONS**

Exhibit “B” includes (alphabetically by title) various service contracting clauses that were included in IFB No. 2019-03, Preapproved List of Vendors for Lawn and Landscaping Services, and are available for use in this contract. Many clauses require the inclusion of additional information. A word or phrase in square brackets indicates that the information identified is to be inserted (e.g., [time], [date]). Clarifications of clauses are in parentheses within or at the end of the clause. These clauses are discretionary and the Agency is neither required to use them nor prohibited from using others which are not included in this exhibit.

1. Anti-assignment/Subcontracting. Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor’s special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.
2. Approval. It is understood that this contract requires approval by the Public Procurement Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.
3. Attorney’s Fees and Expenses. Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney’s fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney’s fees or costs of legal action to Contractor.
4. Authority to Contract. Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.
5. Information Designated by Contractor as Confidential. Any disclosure of those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in the contract, the personal or professional services to be provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret, or confidential commercial or financial information. Any

liability resulting from the wrongful disclosure of confidential information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor without the express written approval of the Agency shall result in the immediate termination of this agreement.

6. Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that Agency is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq.* If a public records request is made for any information provided to Agency pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, Agency shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The Agency shall not be liable to the Contractor for disclosure of information required by court order or required by law.
7. Contractor Personnel. The Agency shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Contractor. If the Agency reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the Agency in a timely manner and at no additional cost to the Agency. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.
8. Debarment and Suspension. Contractor certifies to the best of its knowledge and belief, that it:
  - a. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
  - b. has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
  - c. has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - d. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs (b) and (c) of this certification; and,
  - e. has not, within a three-year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.
9. Disclosure of Confidential Information. In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

10. Exceptions to Confidential Information. Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“disclosing party”) which:
  - a. is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
  - b. is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
  - c. is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
  - d. is independently developed by the recipient without any reliance on confidential information;
  - e. is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,
  - f. is disclosed with the disclosing party’s prior written consent.
11. Errors in Extension. If the unit price and the extension price are at variance, the unit price shall prevail.
12. Failure to Deliver. In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, the Agency, after due oral or written notice, may procure the services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Agency may have.
13. Failure to Enforce. Failure by the Agency at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the Agency to enforce any provision at any time in accordance with its terms.
14. Final Payment. Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, Contractor shall execute and deliver to the Agency a release of all claims against the State arising under, or by virtue of, the contract, except claims which are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the State’s claims against Contractor under this contract.
15. Force Majeure. Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.



16. HIPAA Compliance. Contractor agrees to comply with the “Administrative Simplification” provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.
17. Indemnification. To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney’s fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State’s sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the State’s concurrence, which the State shall not unreasonably withhold.
18. Independent Contractor Status. Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor’s personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Agency, and the Agency shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The Agency shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the Agency shall not provide to Contractor any insurance coverage or other benefits, including Worker’s Compensation, normally provided by the State for its employees.
19. Integrated Agreement/Merger. This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the State and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.
20. Modification or Renegotiation. This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.

21. No Limitation of Liability. Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance of duties by Contractor or the delivery of products that are defective due to negligent construction.
22. Notices. All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Agency:	For Contractor:
[Name, Title]	[Name, Title]
[Agency Name]	[Contractor Name]
[Address]	[Address]
[City, State, Zip]	[City, State, Zip]

23. Non-solicitation of Employees. Each party to this agreement agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time employment of the other party until at least six (6) months after this agreement terminates unless mutually agreed to in writing by the State and Contractor.
24. Oral Statements. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Agency and agreed to by Contractor.
25. Ownership of Documents and Work Papers. Agency shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this agreement, except for Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to Agency upon termination or completion of the agreement. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from Agency and subject to any copyright protections.
26. Priority. The contract consists of this agreement with exhibits, the IFB No. 2019-03, Preapproved List of Vendors for Lawn and Landscaping Services (hereinafter referred to as IFB), and the bid by [CONTRACTOR NAME] (hereinafter referred to as Bid). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this agreement with exhibits and, if still unresolved, by reference to the IFB and, if still unresolved, by reference to the bid. Omission of any term or obligation from this agreement shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.
27. Quality Control. Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing daily supervision and conducting frequent inspections of Contractor's staff and ensuring that accurate records are maintained

describing the disposition of all complaints. The records so created shall be open to inspection by the Agency.

28. Record Retention and Access to Records. Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.
29. Renewal of Contract. The contract may be renewed at the discretion of the Agency upon written notice to Contractor at least [NUMBER] days prior to each contract anniversary date for a period of [NUMBER] successive one-year periods under the same prices, terms, and conditions as in the original contract and/or subsequent contracts. The total number of renewal years permitted shall not exceed [NUMBER], or extend past June 30, 2024.
30. Recovery of Money. Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to the Agency, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and the Agency. The rights of the Agency are in addition and without prejudice to any other right the Agency may have to claim the amount of any loss or damage suffered by the Agency on account of the acts or omissions of Contractor.
31. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by the Agency or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by the Agency, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.
32. Right to Inspect Facility. The State may, at reasonable times, inspect the place of business of a Contractor or any subcontractor which is related to the performance of any contract awarded by the State.
33. Severability. If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.
34. State Property. Contractor will be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this agreement. Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.

35. Third Party Action Notification. Contractor shall give the customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.
36. Unsatisfactory Work. If, at any time during the contract term, the service performed or work done by Contractor is considered by the Agency to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by the Agency, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, the Agency shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.
37. Waiver. No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

## EXHIBIT “C”

### COMPENSATION

The Contractor will charge the hourly rates listed below (as submitted in response to IFB No. 2019-03, Preapproved List of Vendors for Lawn and Landscaping Services):

<b>[CONTRACTOR’S NAME]</b>	Rate for <b>[REGION NAME]</b> Region
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<b>Lawn &amp; Landscaping Services</b>	<b>Price per Hour</b>
Mowing	
Edging	
String Trimming	
Blowing	
Debris Pickup	
Tree Limbing/Pruning below 15 feet	
Pressure Washing	
Mulching (each application)	
Aerate	

(Rates are available on the PPRB website (<http://www.DFA.ms.gov>). They should be added to the above chart. Be sure to use pricing for the correct region.)

*Please delete this paragraph and all other paragraphs highlighted green before issuing the final contract. Also, please verify the total number of pages in the contract (as noted in the footer section) and correct any formatting changes made as a result of modifying the contract. Any modifications to the contract will change the number of pages included and the formatting of the contract.*