

**CONTRACT
FOR
SECURITY OFFICER SERVICES
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
WALDEN SECURITY
(RENEWAL OF CONTRACT NO. 16-132-000)**

The Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Blvd., Austin, Texas 78701 and Walden Security (hereinafter referred to as "Contractor"), located at 511 East John W. Carpenter Freeway, Suite 150, Irving, Texas 75062 enter into the following contract for security officer services (hereinafter referred to as the "Contract") pursuant to Tex. Gov't Code Ann. Ch. 2165 (West 2016). (Renewal of Contract No. 16-132-000.)

I. STATEMENT OF WORK.

1.1. **SERVICE REQUIREMENTS.** Contractor shall provide uniformed security officer services for the following: (i) the Department of Health Campus and Laboratory located at 1100 W. 49th St., Austin, TX 78751; (ii) the Brown-Heatly Building and Parking Garage H (PKH) located at 4900 N. Lamar, Austin, TX 78751; (iii) the Texas Workforce Commission Administration Building and the Criss Cole Rehabilitation Center located at 4800 N. Lamar, Austin, TX 78751; (iv) the John H. Winters Building located at 701 West 51st Street, Austin, TX 78751; and (v) the Department of Health Headquarters Building located at 909 West 45th Street, Austin, TX 78751 (hereinafter collectively referred to as the "Service Location") in accordance with Exhibit A – Post Orders (hereinafter referred to as "Post Orders"), and Exhibit G – Facility and Post Map, both attached hereto and incorporated herein for all purposes. Contractor shall provide all labor and listed equipment necessary to perform these services.

1.2. **CONTRACTOR RESPONSIBILITIES.** (a) Contractor shall provide uniformed, trained security supervisors, leads and officers, in uniform, oriented to security duties and supervised as required by this Contract. Upon the failure of any security supervisor, lead or officer to arrive on time and perform the duties assigned, Contractor shall forfeit payment for that shift worked by the individual security personnel. TFC also reserves the right to terminate the Contract if actions do not meet the performance requirements, as defined in Section 2.3 below.

(b) Contractor shall be responsible for damage to TFC's equipment, and/or the workplace and its contents, by its actions or omissions, its negligence, its personnel, or its equipment. Contractor shall be responsible and liable for the safety, injury, and health of its working personnel while its employees are performing work for TFC. In the event property is damaged or stolen due to negligence or apparent negligence by Contractor's employees in the performance of their duties, Contractor shall be responsible for the replacement or repair of said property. Continued incidents of theft, damaged property, etc., may result in the immediate termination of the Contract. If the Contract is terminated with default, as described in Section 2.2 below, Contractor shall be responsible for any additional costs incurred due to termination of the Contract.

(c) Contractor shall ensure security officer(s) are on time and at the proper duty location as scheduled. Security personnel are to report for duty early enough to ensure continuity of coverage, allow time for special instructions, and to be briefed on any other pertinent information that needs to be forwarded.

(d) Security officers shall be performing various duties on each shift. Once individuals are trained, the same individuals shall be utilized to the extent practicable. If a new security officer is provided, Contractor shall ensure that the individual is properly trained on the Post Orders for a minimum of two (2) hours at no additional cost to TFC.

(e) TFC reserves the right to require Contractor to replace any individual security officer who does not treat the public and clients in a firm but courteous manner, does not perform assigned duties in a manner that will properly deter hostile situations, or is deemed incompetent, careless, or otherwise objectionable. TFC's Contract Administrator, addressed in more detail in Section 1.5 below, has the authority to exercise the right, at any time, to have the officer removed from duty. Contractor shall assign a replacement officer on duty as soon as possible, but no later than four (4) hours after removal.

(f) When a regularly assigned security officer separates from employment with Contractor, is reassigned, or is absent due to illness or vacation, the replacement security officer must be instructed in responsibilities particular to the assigned duty location and the Post Orders. Assignment of a replacement or substitute officer must be coordinated through TFC's Contract Administrator by providing advance notice.

(g) While on duty, Contractor's employees shall not receive any personal visitors at assigned duty locations to avoid any interference with performance of duties and Post Orders in accordance with the Contract.

(h) TFC may provide access cards to Contractor for its employees' access into the buildings, one (1) to each security officer for business use only and not to be shared with other person(s). Access cards must be surrendered immediately to the TFC Contract Administrator on request, or within one (1) business day of the termination of Contractor's employees.

(i) Contractor shall have a local physical office with local telephone service. Contractor shall advise TFC of all current phone numbers. The use of a recording or answering device, or an answering service, is not acceptable except for after Regular Business Hours. Contractor shall provide TFC's Contract Administrator an emergency twenty-four (24) hour response number to allow immediate contact of the authorized Contractor representative.

(j) TFC has developed Post Orders that are to be followed by Contractor. Post Orders are subject to change. It will be the responsibility of Contractor to ensure that all security officers assigned under the Contract review the Post Orders. An updated set of Post Orders shall be given to Contractor quarterly or upon modification.

(k) Contractor shall station the on-site leads and officers at designated posts at all times as specified by TFC's Contract Administrator, as defined in Section 1.5 below.

(l) If Contractor fails to perform as required by this Contract or if in the judgment of TFC's Contract Administrator, Contractor's work methods are not adequate to ensure completion of the work per the allotted schedule, then TFC's Contract Administrator may direct Contractor at no additional cost to TFC to revise the work schedules to ensure completion of the work.

1.3. **CONTRACTOR HOURS AND PAY.** Contractor shall provide security officers for the hours of service needed in accordance with Exhibit B – Weekly Officer Hours, attached hereto and incorporated herein for all purposes. Hours of service are estimated, and TFC at its option may increase or decrease hours of service as deemed necessary.

1.4. **EQUIPMENT.** (a) Contractor shall be responsible for providing the following equipment.

(i) Five (5) security vehicles (golf cart or similar vehicle) for staff to travel around the Service Location. These vehicles must be in new or like new condition and street legal at the commencement of the Contract, and it shall be adequately equipped for safe operation during any type of weather. The vehicles shall be maintained properly and in good working condition and order during the entire term of the Contract. These vehicles shall also be properly labeled with Contractor's name and always operated in a safe and lawful manner. Personally-owned vehicles may not be used for any security purposes. If any Contractor vehicle is not functioning, then Contractor provide a temporary vehicle until repairs are complete.

(ii) Office supply products for its employees. To include, but not be limited to, pens, paper, notebooks, post-it notes, stapler, staples, tape and highlighters.

(iii) Appropriate wet weather apparel, cold weather apparel, flashlight and any other necessary items to perform duties during inclement weather conditions. Contractor's employees shall not utilize personally owned apparel or items.

(iv) "Push-to-Talk" type two-way radios for the security officers to use while on duty. The radios are to be used in a professional and appropriate manner at all times. The radios are to be programmed with TFC personnel contact information. The supervisor on duty must also be accessible by cell phone for calls and call forwarding. All equipment must be compatible with TFC cellular/radio equipment.

(b) Contractor may provide, at its discretion, one (1) Segway or similar vehicle, with prior written approval by the TFC Contract Administrator, for patrol. The vehicle must be in new or like new condition at the commencement of the Contract.

(c) TFC shall be responsible for furnishing computers, as applicable, for the duty locations for official TFC-associated work. Each officer using any computer equipment must sign the TFC computer security agreement. TFC will furnish supplies for this equipment and maintain it. Misuse of this equipment could lead to a TFC request for removal of all Contractor employees associated with misuse and/or immediate termination of the Contract.

1.5. **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 TFC's Contract Administrator or his/her designated representative(s) (hereinafter referred to as

“Contract Administrator”) are to be strictly and promptly followed by Contractor at all times. However, TFC’s 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.

(b) Contractor agrees to conduct all of its services under this Contract by and through appropriate communications with TFC’s Contract Administrator. Contractor agrees to employ competent personnel meeting the requirements outlined in the terms and conditions of this Contract, who shall be satisfactory to TFC. Personnel assigned to perform services under this Contract may not be reassigned without prior written notification to TFC’s Contract Administrator and receipt of prior approval not to be unreasonably withheld.

1.6. **UNIFORMS.** All of Contractor’s employees shall be uniformed properly, to include shirts, pants, jackets, caps, shoes/boots, (tennis shoes are not acceptable), belts, patches and badges, and be neat and well-groomed in appearance while on duty. All employee uniforms shall be the same design and color, with the exception of minor differences for the lead and supervising officer’s uniforms to distinguish from the security officers. Contractor shall submit photographic samples of all intended uniforms with the proposal. Uniforms are subject to TFC approval, and no changes may be made in the proposed uniforms without written approval from TFC Contract Administrator, not to be unreasonably withheld. Uniformed officers are not allowed to wear earrings or any other jewelry, with the exception of wedding rings, Medic Alert bracelets or similar jewelry subject to approval by TFC while on duty at the TFC duty locations named in this Contract.

1.7. **PHONES.** Phone calls are to be limited to emergency and official business use only. Collect calls and long distance calls are not permitted. Misuse of telephones could result in termination of the Contract. Contractor is responsible for reimbursement of any charges made for these calls. Use of personal cell phones shall be restricted to emergency calls only.

1.8. **CONTRACTOR ACCESS.** (a) Access routes, entrance gates or doors, parking and storage areas, and other necessary Contractor access, along with any imposed time limitations shall be designated by 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.

(b) Contractor parking will be located on the top level of Garage H.

(c) Contractor shall permit only authorized persons to enter restricted areas of the Service Location as indicated by security procedures and Post Orders.

1.9. **EXISTING UTILITIES AND STRUCTURES.** Contractor shall adequately protect 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. 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 shall 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 may have the right to utilize air, water, gas, steam, electricity, and similar items of expense from existing outlets on TFC's property.

1.10. **WASTE REMOVAL.** Contractor shall keep the duty locations clean on a continual basis, and no trash or debris will be permitted to accumulate in work areas.

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

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

1.13. **DELIVERY RELEASE CHANGE NOTICES.** TFC may request Additional Services, as defined in Section 3.3 below, at any time during this Contract. Such requests for Additional Services shall be documented through a separate document (hereinafter referred to as a "Delivery Release"). Each Delivery Release will constitute an amendment 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.

II. TERM.

2.1. **CONTRACT AWARD.** (a) This Contract shall be effective as of September 1, 2017 and shall expire on August 31, 2019, unless extended by the parties by amendment to this Contract or terminated earlier, as provided in Section 2.02 set forth below. This Contract may be renewed for an additional one (1), two (2) year period, provided that renewal is executed by written amendment to this Contract 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.

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

(b) Termination without Default. TFC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice (the "Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by TFC under this subsection, Contractor shall be governed by the terms and conditions, and shall perform the acts outlined in the following Section 2.2(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 2.02(c) above. Contractor will be held responsible for additional cost incurred from the termination of this Contract.

2.3. **UNSATISFACTORY PERFORMANCE.** 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 terms of this Contract, 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 may be considered nonperformance of services and may result in informal corrective actions, formal corrective action plans, withholding of payment and/or termination of this Contract. TFC may consider the following as unsatisfactory performance:

- (i) failure of an officer to perform tasks at the time specified in Post Orders;
- (ii) an officer does not know or understand Post Orders;
- (iii) an officer accepts direction from tenant or other unauthorized personnel;
- (iv) excessive attendance issues, turnover, absence or tardiness;
- (v) failure of Contractor to provide back-up for absent officers;
- (vi) failure of Contractor to provide suitable permanent replacement for any terminated officers;
- (vii) if an officer does not meet standards for professional appearance, to include uniforms name tags and cold/wet weather apparel;

(viii) unauthorized use of state owned or personal equipment, including but not limited to phones, cell phones, and computers; and,

(ix) if an officer does not speak, read or write fluent English, to the Contract Administrators satisfaction

2.4. **CORRECTIVE ACTION PLAN.** (a) If TFC discovers issues of unsatisfactory performance as set forth in Section 2.03 above that need to be corrected or accomplished, TFC may request a "Corrective Action Plan" from Contractor. Upon request from the Contract Administrator, Contractor shall deliver a Corrective Action Plan within ten (10) business days and it must be approved by the Contract Administrator. The Corrective Action Plan must address and correct all unsatisfactory performance within thirty (30) days of implementation. Failure to correct the unsatisfactory performance within the allotted time shall be grounds for termination. 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 buildings, services, or group of services, from the scope of this Contract; or

(ii) TFC's termination of this Contract, immediately without notice to Contractor, or otherwise with such notice as TFC elects to provide.

(b) If Contractor is required to deliver and perform more than one (1) Corrective Action Plan within any period of twelve (12) continuous months during the term of this Contract, and regardless of whether or not Contractor successfully completes such Correction Action Plan, TFC may consider such conduct to amount to Contractor's continuing material nonperformance of services under this Contract. In such an event, TFC shall be entitled to avail itself of one or more of the following remedies at TFC's sole discretion:

(i) TFC's removal of one (1) or more buildings from the scope of this Contract;

(ii) TFC's imposition of liquidated damages on Contractor in an amount equal to ten percent (10%) of Contractor's revenue hereunder from the date TFC first notified Contractor of the need for the initial Correction Action Plan until the date on which Contractor is required to complete its most recently required Corrective Action Plan; and/or

(iii) TFC's termination of this Contract, immediately without notice to Contractor, or otherwise with such notice as TFC elects to provide, in its sole discretion.

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

III. CONSIDERATION.

3.1. **CONTRACT LIMIT AND FEES AND EXPENSES.** (a) The total amount of fees to be paid under this Contract shall not exceed the sum of Four Million Five Hundred Fifty Three Thousand Nine Hundred Forty Six and 24/100 Dollars (\$4,553,946.24). This amount includes the Fiscal Year 2018-19 contract base fee of Four Million Five Hundred Thirty Three Thousand Nine Hundred Forty Six and 24/100 Dollars (\$4,533,946.24) and Twenty Thousand and No/100 Dollars (\$20,000.00) to cover any Additional Services, as defined in Section 3.3 below. Pricing fees shall be invoiced in accordance with Exhibit C – Compensation and Fees, attached hereto and incorporated herein for all purposes. Any changes to the not-to-exceed amount or pricing fees set forth in Exhibit C – Compensation and Fees shall be submitted to TFC for review and shall be approved by amendment to this Contract.

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

3.2. **PAYMENTS TO CONTRACTOR.** (a) Payments to Contractor will be made within thirty (30) days from receipt of a correct invoice or billing statement in accordance with 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.

(b) Contractor shall invoice TFC for work performed by vendor identification number, building, and purchase order number. Address for submission is: Texas Facilities Commission, Accounts Payable, P. O. Box 13047, Austin, Texas 78711-3047.

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

(b) 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 C – Compensation and Fees and shall be documented by amendment to this Contract.

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

IV. CONTRACTOR PERSONNEL.

4.1. **REQUIRED QUALIFICATIONS.** (a) At all times during the term of the Contract, Contractor shall have available, under direct employment and supervision, the necessary qualified personnel according to Exhibit D – Officer Qualifications and Requirements, attached hereto and incorporated herein for all purposes, organization and facility to properly fulfill all the terms and conditions of this Contract.

(b) Contractor shall provide a copy of each officer's individual registration with the Private Security Bureau of the Texas Department of Public Safety or other proof acceptable to TFC.

(c) TFC reserves the option to add or delete the service of security officers. TFC shall provide the vendor at least fourteen (14) days prior notice before reducing the number of hours or officers required for any site.

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

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

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

4.4. **COOPERATION.** All project managers, employees, and associated Subcontractors of Contractor shall cooperate with and assist each other and all other members of the project team retained by TFC.

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

(b) Contractor understands and agrees that work or any other service performed without the prior written direction of the TFC Contract Administrator is work outside the scope of

this Contract and shall be performed exclusively at Contractor's risk.

(c) Contractor agrees to cooperate and coordinate with that of the contractors retained by TFC. Upon discovery of the apparent conflict and sequencing of work with another contractor, Contractor shall report the concern to the TFC Contract Administrator who will resolve the conflict.

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

(e) Contractor agrees to cooperate and coordinate its work and Services with that of other members of the project team retained by TFC. Upon discovery of an apparent conflict in the sequencing of work or Services with another Service Provider, Contractor shall report the concern to the TFC Contract Administrator.

V. STATE FUNDING.

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

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

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

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

evaluating by TFC and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

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

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

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

6.3. **PUBLIC RECORDS.** Pursuant to Chapter 552 of the Texas Government Code, the "Texas Public Information Act" (the Act), information or documents received from Contractor are subject to the Act and may be open to public inspection and copying. TFC will have the duty to disclose information unless a particular record is made confidential by law or otherwise excepted from disclosure under the Act. Contractor may clearly label individual documents as "confidential" or a "trade secret". If a public records request for a labeled document is received by TFC, TFC will notify Contractor of the request in accordance with the Act. Disclosure of such labeled information is dependent on a ruling from the Office of the Attorney General.

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

VII. CONTRACTOR'S RESPONSIBILITIES AND WARRANTIES.

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

7.2. **PERFORMANCE STANDARDS.** All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and shall comply with all federal, state, and local laws, rules and codes.

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

7.4. **PERFORMANCE WARRANTY.** All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and of local codes and ordinances and any other authority having lawful jurisdiction.

7.5. **MATERIAL WARRANTY.** All material and equipment furnished under this Contract is guaranteed by Contractor to be in compliance with this Contract, fit and sufficient for the purpose intended, new and free from defects. Materials furnished under this Contract shall be the latest improved models in current production, as offered to commercial trade, and shall be of quality material. **USED, SHOPWORN, DEMONSTRATOR, PROTOTYPE, RECONDITIONED, OR DISCONTINUED MODELS OR MATERIAL ARE NOT ACCEPTABLE.**

VIII. BONDS, INSURANCE, INDEMNIFICATION AND LEGAL OBLIGATIONS.

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

(a) Workers' Compensation and Employers' Liability coverage with minimum policy limits for employers' liability of \$1,000,000.00 bodily injury per accident, \$1,000,000.00 bodily injury disease policy limit and \$1,000,000.00 per disease, per employee. Workers' compensation insurance coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(46). Certification in writing from Contractor and subcontractors shall be provided to TFC in accordance with Texas Labor Code, Section 406.096. The policy shall contain an endorsement for Waiver of Transfer Right of Recovery Against Others in favor of TFC.

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

- (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 \$1,000,000.00 per accident for bodily injury and property damage. The policy shall contain the following endorsements in favor of TFC:

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

(ii) Thirty (30) day Notice of Cancellation in favor of TFC; and

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

(d) Umbrella Liability Insurance for an amount of not less than \$2,000,000.00 that provides coverage at least as broad as and applies in excess and follows the form of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

8.2. 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, 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) Contractor shall produce endorsements upon TFC's request to each affected policy 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.

(f) 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.

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

(h) 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).

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

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

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

(b) CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY

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

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

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

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

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

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

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

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

IX. CONTRACTOR GENERAL AFFIRMATIONS.

9.1. **FINANCIAL INTERESTS/GIFTS.** Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, Contractor has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract. In addition, pursuant to Texas Government Code Chapter 573 and Section 2254.032, if applicable, Contractor certifies that Contractor knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in Contractor's company or corporation. Contractor further certifies that no partner, corporation, or unincorporated association which employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which Contractor will be dealing on behalf of TFC.

9.2. **PRIOR EMPLOYMENT.** Contractor 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 firm or corporation. Contractor further certifies that no partner, corporation, or unincorporated association that 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 pursuant to the Texas Government Code, Chapter 573 and Section 2254.032. Furthermore, Contractor certifies and agrees that if it employs any former employee of TFC, such employee will perform no work in connection with this Contract during the twelve (12) month period immediately following the employee's last date of employment at TFC.

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

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

9.5. **DEBTS OR DELINQUENCIES OWED TO STATE.** Any payment due under this Agreement may be withheld and applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support pursuant to Texas Government Code, Section 43.055.

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

9.7. **EQUAL OPPORTUNITY.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, age, 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 shall post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination subsection. Contractor shall include the above provisions in all Subcontracts pertaining to the Work.

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

violations or of any unfair business practices in an administrative hearing or court suit. In the event that allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code or of any unfair business practices against either Contractor or any of Contractor's officers have occurred or are currently pending in an administrative proceeding or in a lawsuit filed with any court, then Contractor has disclosed all such matters to TFC and provided a brief description of each allegation, information regarding the administrative body or court before which the matter is pending, and the current status of the matter.

9.9. **DISCLOSURE OF FORMER STATE EXECUTIVE.** Pursuant to the Texas Government Code, Section 669.003 relating to contracting with an executive of a state agency, 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 Contract. If Contractor employs or has used the services of a former executive head of TFC or any other state agency, then Contractor has provided 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 hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors and subcontractors who contract with the State. Contractor shall not place any employee of Contractor

at a worksite, nor shall Contractor permit any employee, nor any Subcontractor, to perform any work on behalf of, or for the benefit of, TFC without first confirming said employee's authorization to lawfully work in the United States. Contractor warrants that Contractor: (i) maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with applicable law; (iii) has established internal safe officers and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to Contractor's senior management; and (iv) is without knowledge of any fact that would render any employee or Subcontractor ineligible to legally work in the United States. Contractor further acknowledges, agrees, and warrants that Contractor: (i) has complied, and shall at all times during the term of the Contractor comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement ("DHS-ICE"), including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees; and (iii) has responded, and shall at all times during the term of the Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Agreement, Contractor shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by TFC or any state agency of Contractor or any of its employees. Contractor acknowledges, agrees and warrants that all Subcontractors permitted by it to perform work will be required to agree to these same terms as a condition to being awarded a Subcontract for such work.

9.14. **E-Verify.** (a) By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of: (i) all persons employed to perform duties within the State of Texas, during the term of the Contract; and (ii) all persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

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

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

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

9.16. **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 with its billing documents affirming that all employees have been paid not less than the current "Federal Minimum Wage."

X. MISCELLANEOUS PROVISIONS.

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

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

(i) Contractors planning to subcontract all or a portion of the work to be performed under this Contract shall identify the proposed subcontractor on Exhibit F – 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.

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

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

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

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

(b) If applicable, Contractor shall provide the Texas Department of Information Resources ("DIR") with the universal resource locator ("URL") to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<https://app.buyaccessible.gov/baw/Main.jsp>). Vendors and service providers not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

10.6. **RELATIONSHIP OF THE PARTIES.** Contractor is associated with TFC only for the purposes and to the extent specified in this Contract, and with respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent Contractor. Subject only to the

terms of this Contract, Contractor shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and TFC shall have no obligation with respect to:

- (i) withholding of income taxes, FICA or any other taxes or fees;
- (ii) industrial or workers compensation insurance coverage;
- (iii) participation in any group insurance plans available to employees of the State of Texas;
- (iv) participation or contributions by the State of Texas to the State Employees Retirement System;
- (v) accumulation of vacation leave or sick leave; or
- (vi) unemployment compensation coverage provided by the State.

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

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

10.9. **NOTICES.** All notices, demands and requests required in this Agreement (hereinafter referred to as "Notices") must be in writing and shall be deemed to have been properly delivered and received: (i) three (3) business days after deposit in a regularly maintained receptacle for the United States Postal Service, certified mail, return receipt requested with adequate postage prepaid; or (ii) one (1) business day after deposit with Federal Express or other comparable overnight delivery system for overnight delivery with all costs prepaid. Electronic copies of all Notices shall also be sent via electronic mail to the e-mail address(es) listed below; provided, no notice shall be deemed effective notice if only delivered by electronic mail. All Notices hereunder shall be addressed as follows:

For TFC: Attention: Legal Services Division
Texas Facilities Commission
1711 San Jacinto Blvd., Room 400
Austin, TX 78701
Phone: (512) 463-3446
Fax: (512) 236-6171

For Contractor: Attention: John Deller
Walden Security
511 East John W. Carpenter Freeway, Suite 150
Irving, TX 75062
Phone: (214)296-5606
john.deller@waldensecurity.com

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

10.10. **GOVERNING LAW AND VENUE.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought pursuant to this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Contractor hereby irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of, or responding to, any action or proceeding in such jurisdiction with respect to this Contract or any document related hereto.

10.11. **SEVERABILITY.** In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision herein, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision there shall be substituted a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

10.12. **PROPER AUTHORITY.** The parties hereto represent and warrant that the Person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that this Contract is effective only for the period of time specified in the Contract.

10.13. **FORCE MAJEURE.** Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure", including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods,

earthquakes, hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, TFC may terminate this Contract immediately upon written notification to Contractor.

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

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

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

10.17. **NO WAIVER OF SOVEREIGN IMMUNITY.** Except as may be expressly and specifically provided otherwise by Chapter 114, Texas Civil Practice and Remedies Code, nothing in this Agreement shall be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas, TFC or the Using Agency. 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 the Agreement 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.

10.18. **NO IMPLIED WAIVER.** The failure of a party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in this Agreement shall not be construed as a waiver or a relinquishment thereof for the future.

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 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. **ENTIRE CONTRACT AND MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire contact of the parties and as 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, superseding all prior or

contemporaneous agreements and negotiations between them. TFC shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind not expressly set forth herein and Contractor agrees is it not acting in reliance on any such extraneous matters. 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

By: [Signature]

Harvey Hilderbran

Executive Director

Date of execution: 7-17-17

G.C. [Signature]

Dir. [Signature]

D.E.D. [Signature]

WALDEN SECURITY

By: [Signature]

Print Name: Amy S Walden

Title: Chairman & CEO

Date of execution: 7/11/17

EXHIBIT A
TFC CONTRACT NO. 18-026-000
POST ORDERS

EXHIBIT B

TFC CONTRACT NO. 18-026-000

WEEKLY OFFICER HOURS

EXHIBIT C

TFC CONTRACT NO. 18-026-000

COMPENSATION AND FEES

EXHIBIT D

TFC CONTRACT NO. 18-026-000

OFFICER QUALIFICATIONS AND REQUIREMENTS

EXHIBIT E

TFC CONTRACT NO. 18-026-000

**CRIMINAL BACKGROUND CHECK CRITERIA AND APPLICATION
GUIDELINES**

EXHIBIT F

TFC CONTRACT NO. 18-026-000

HUB SUBCONTRACTING PLAN

EXHIBIT F-1

TFC CONTRACT NO. 18-026-000

HSP PROGRESS ASSESSMENT REPORT

EXHIBIT G

TFC CONTRACT NO. 18-026-000

FACILITY AND POST MAP