



## LANDSCAPING SERVICES BEST VALUE INVITATION TO BID

ISSUE DATE: September 15, 2020

DUE DATE: **2:00 P.M. on October 15, 2020** (“Submission Deadline”)

INSTRUCTIONS: Bidders are asked to submit five (5) paper copies of their bid and one (1) electronic copy of their bid on a flash drive. Submittals must be delivered in a sealed envelope in person, via mail or courier. Please write “**Landscaping Bid**” clearly on the outside of the sealed package. All electronic files should include the name of the company as the first part of the file name. Diversity participation information provided by Bidder should be enclosed in a separately-sealed envelope (and in a separate folder on the flash drive) labelled “Diversity”. Submittals received by email, fax, or after the Submission Deadline will be rejected.

SUBMIT TO: Houston First Corporation, Attn: Mitch Miskowski, 701 Avenida de las Americas, Suite 200, Houston, TX 77010.

CONTACT INFO: Any questions concerning this Invitation to Bid must be submitted by email to [bids@houstonfirst.com](mailto:bids@houstonfirst.com) no later than **10:00 a.m. on October 6, 2020**. Materials questions will be answered collectively in one or more Letter(s) of Clarification to be made available at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business). Questions received may be edited or combined with similar questions for clarity or length at the discretion of HFC.

BID OPENING: Bids will be opened and publicly announced at 2:30 p.m. on the Submission Deadline at 701 Avenida de las Americas, Suite 200, Houston, TX 77010.

### OVERVIEW AND SCOPE

Houston First Corporation (“HFC”) requests bids from experienced contractors to provide landscape maintenance on an as-needed basis to produce and maintain healthy and aesthetically-pleasing lawn, groundcover, annual and perennial plants, shrubbery, and trees in landscaped areas of its facilities.

### BACKGROUND

HFC is a local government corporation created by the City of Houston to facilitate economic growth through the promotion of the greater Houston area and the business of conventions, meetings, tourism, and the arts. HFC is the primary entity responsible for marketing Houston and increasing awareness of its many attractions and amenities.

HFC is responsible for the operation and management of the George R. Brown Convention Center, Avenida Houston, Partnership Tower, Wortham Theater Center, Jones Hall for the

Performing Arts, Miller Outdoor Theatre, an array of outdoor properties, and parking facilities that can accommodate nearly 10,000 vehicles.

HFC represents the consolidation of the former City of Houston Convention & Entertainment Facilities Department and the Houston Convention Center Hotel Corporation. The Houston Convention Center Hotel Corporation (now called Houston First Corporation) was organized in 2000. The consolidation with the Convention & Entertainment Facilities Department was effective on July 1, 2011.

### **PRE-BID MEETING**

A Pre-Bid Meeting will be held for the benefit of all prospective Bidders by video teleconference call at **10:00 a.m.** on **October 1, 2020**. Bidders who expect to attend must register in advance online at [https://zoom.us/meeting/register/tJUvcuigqj4sGdM0h8ZciizGS-X\\_y38GLG19](https://zoom.us/meeting/register/tJUvcuigqj4sGdM0h8ZciizGS-X_y38GLG19). While attendance is not mandatory, all interested bidders are encouraged to attend.

### **BID FORMAT**

Although HFC prefers substance over form, to be considered responsive, Bidders are asked to review the following criteria/information requests and respond, in order, to the best of their ability:

- a. **Cover Letter** (max 2 pages): Write a letter communicating why the Bidder should be selected to perform landscaping services on behalf of HFC. The letter must be signed by a person authorized to make representations on behalf of the Bidder and include a direct phone number and email address. Bidders must make a specific, unambiguous statement accepting and agreeing to comply, if selected, with the Landscaping Services Agreement provided below.
- b. **Company Profile** (max 10 pages): Provide a brief profile of the Bidder, noting its history, structure, strengths, and ability to meet the needs of its clients. Introduce the primary point-of-contact for services that would be performed for HFC and summarize his or her qualifications. Provide three current references for landscaping services at comparable facilities; include a contact name, phone number, and email address for each such reference. (Do not use HFC or the City of Houston as a reference.) Bidders must disclose if they have, within the past five years, (i) been party to a service contract terminated for cause, or (ii) received material, adverse findings from any governmental authority having regulatory oversight of services similar to those required under this Invitation to Bid.
- c. **Pricing**: Bidders must provide comprehensive pricing for the services using the Pricing Form available online at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business).
- d. **Diversity Commitment**: Bidders should indicate how they intend to make good faith efforts to utilize diverse companies to meet the Diversity Goal for these services.

Bidders are asked to avoid excessive graphics, title pages, or other extraneous information in their Bid.

### **MANNER OF SELECTION**

HFC intends to award the contract to the Bidder offering the **best value** to HFC, as measured by HFC utilizing the following evaluation criteria, for a maximum total score of 100 points:

Cover Letter, including acceptance of Landscaping Services Agreement (15 points); Company Profile (35 points); Price (40 points); Diversity Commitment (10 points).

HFC reserves the right to select or reject all or part of any bid, waive minor technicalities, and select one or more bids in the manner and to the extent that they are deemed to serve the best interests of HFC. This Invitation to Bid does not commit HFC to award a contract or issue a purchase order. HFC shall not pay or reimburse any costs incurred in the preparation of a bid in response to this Invitation to Bid. HFC reserves the right to request bid clarifications and/or additional information from some or all Bidders.

### **LETTERS OF CLARIFICATION**

Responses to all material questions timely submitted by potential Bidders, as well as any revisions incorporated into this Invitation to Bid, will be confirmed collectively, rather than individually, in a letter made available online at <http://www.houstonfirst.com/do-business/> (each, a "Letter of Clarification"). When issued, Letters of Clarification become part of this Invitation to Bid and automatically supersede any previous terms, conditions, specifications, or provisions in conflict therewith. By submitting their bid, Bidders shall be deemed to have reviewed all Letters of Clarification, considered all responses, as well as any revisions, and incorporated them into their submittal. Verbal responses by any HFC officer, director or employee cannot alter the terms, conditions, specifications, or provisions as stated herein. It is the responsibility of Bidders to monitor the foregoing link and ensure they review any such Letters of Clarification and incorporate them in their bid.

### **DIVERSITY PARTICIPATION**

The Bidder selected will be required to use good-faith efforts to award subcontracts to diversity participants certified by any of the identified certification agencies as defined in the [HFC Diversity Program](#). HFC has established the following goal for these services: **20%** of the total value of the Agreement. Bidders should note if they are certified as a diversity participant in their submittal; however, such certification shall not lessen or otherwise alter the requirement to use good faith efforts to award subcontracts to diversity participants. Diversity participation information provided by Bidders should be delivered with the bid in a **separately-sealed envelope** labelled "**Diversity**".

### **FORM OF AGREEMENT**

By submitting a response to this Invitation to Bid, Bidder agrees, upon notice of selection, to promptly enter into the [Landscaping Services Agreement](#) provided below. Any requests for clarification or modification to the terms of such agreement must be timely submitted by email to [bids@houstonfirst.com](mailto:bids@houstonfirst.com), and responses to material questions and issues will be included in a Letter of Clarification. Bidders are advised that additional or conflicting terms, alternative pricing bids, pre-printed forms, or other objections submitted by a Bidder with their bid shall be disregarded and may result in a bid being deemed, in HFC's discretion, as non-responsive.

### **RESTRICTIONS ON COMMUNICATIONS**

Throughout the selection process, commencing with the Issue Date, Bidders are directed not to communicate, directly or indirectly, with any HFC employee, officer, director, or selection committee member regarding their bid, or any matter relating to this Invitation to Bid, other than through [bids@houstonfirst.com](mailto:bids@houstonfirst.com), during the Pre-Bid Meeting, or in response to a direct inquiry from the HFC Purchasing Agent or General Counsel Department. Bidders who disregard the

Restrictions on Communications provision do so at their peril, as **HFC shall have the right to reject any bid due to violation of this provision.**

### **CONFLICTS OF INTEREST**

Bidders are advised that they have an affirmative obligation to disclose any affiliation or business relationship with an HFC employee, officer, or director creating a conflict of interest (or appearing to a reasonable person to potentially exist). Those who need the disclosure form may find it online at <http://www.ethics.state.tx.us/forms/CIQ.pdf>. By submitting a bid, Bidders represent to HFC that they have complied with the requirements of Chapter 176 of the Texas Local Government Code.

### **VENDOR CODE OF CONDUCT**

Bidders who do business or seek to do business with HFC are expected to interact with HFC with high ethics and integrity. To promote ethical conduct by its existing and potential contractors, HFC has adopted a Code of Conduct for Vendors, available online at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business). HFC requires that all Bidders be familiar with and abide by the Code of Conduct for Vendors.

### **PROTEST PROCEDURES**

Any protest relating to the form, terms and conditions, selection criteria, specifications, exhibits, or any other material bid content must be filed by the actual or potential Bidder with the Purchasing Agent no later than five business days prior to the Submission Deadline. If the protest consists of a dispute regarding the Bidder recommended by the selection committee, or otherwise relates to the alleged misapplication of selection criteria, then the Purchasing Agent must receive the protest from an actual Bidder after the Submission Deadline, but at least three business days prior to consideration of a contract resulting from this Invitation to Bid by an HFC committee or Board of Directors, whichever is earlier.

All protests must be made in writing and delivered to Houston First Corporation, Attn: Purchasing Agent, 701 Avenida de las Americas, Ste. 200, Houston, TX 77010. To be considered by HFC, protests must be timely received and include, at a minimum, all of the following information: (a) The name, address and contact information of the Bidder, with sufficient information to establish that a bona fide Bidder is the person or entity filing the protest; (b) The full title of the Invitation to Bid; (c) Material grounds for the protest, including the provisions of the Invitation to Bid and the applicable law or regulation that serves as the basis for the protest; (d) A statement of the specific relief requested by the Bidder; (e) Reference to and attachment of any pertinent documents or sources relied upon by the protestor that the protesting party wishes to have HFC consider; and (f) An affidavit attached to support any factual allegations stated in the submission. The Purchasing Agent will notify the Bidder promptly to acknowledge receipt of a protest.

### **INVITATION TO BID PACKETS**

A complete copy of this Invitation to Bid, including exhibits, necessary forms and other relevant information, is available on-line at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business). This Invitation to Bid provides the information necessary to prepare and submit a bid for consideration and ranking by HFC.

### **PUBLIC INFORMATION**

As HFC is subject to the Texas Public Information Act ("TPIA"). Information submitted by Bidders is subject to release under the provisions of the TPIA set forth in Chapter 552 of the Texas

Government Code, any page including confidential or proprietary information appears must be labeled as such clearly and unambiguously. Bidders will be advised of any request for public information that implicates their materials and may, in accordance with applicable law, elect to assert objections to disclosure with the Texas Attorney General at their cost and expense.

**WITHDRAWAL; ERROR**

Bids may be withdrawn due to errors or for any other reason by a written request received by [bids@houstonfirst.com](mailto:bids@houstonfirst.com) prior to the Submission Deadline.

## LANDSCAPING SERVICES AGREEMENT

This Landscaping Services Agreement (“Agreement”) is made by and between Houston First Corporation (“HFC”), whose address is 701 Avenida de las Americas, Suite 200, Houston, TX 77010 and [TBD] (“Contractor”), whose address is [TBD]. In consideration of the mutual promises contained herein, the parties hereby agree as follows:

### ARTICLE 1: DUTIES OF CONTRACTOR

1.1 Services. Contractor shall provide all labor, supervision, management, administrative and support services, materials, equipment, insurance, tools, machinery, fuel, transportation, and other goods and services of any kind or type necessary to provide comprehensive landscape services necessary to maintain healthy and aesthetically-pleasing lawn, groundcover, annual and perennial plants, shrubbery, and trees in landscaped areas of the Facilities in strict accordance with the terms and conditions of this Agreement, including the Scope of Services attached hereto as **Exhibit “A”** and made a part hereof for all purposes (collectively, the “Services”). Maps approximating the boundaries of the service areas, provided for informational purposes, are attached hereto as **Exhibit “B”** [available on-line at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business)]; Contractor acknowledges and agrees that such maps shall not, in any manner or to any extent, be interpreted or understood to limit the scope of services required under this Agreement.

1.2 Standard of Care. Contractor represents and warrants to HFC that the Services shall be performed in compliance with applicable federal, state, and local laws, statutes, ordinances, rules, regulations and lawful orders of public authorities, as may be amended from time to time, and in a good and workmanlike order meeting the standards of quality prevailing in Harris County, Texas for services of this kind. Without limiting the foregoing or the liability of Contractor under the insurance and indemnification provisions set forth herein, Contractor represents and warrants that it shall abide by (a) the Texas Water Code, (b) the City of Houston Code of Ordinances, Chapter 47 provisions concerning discharges not composed entirely of storm waters, and (c) the Cosmetic Water Wash Guidelines issued by the Director of Public Works and Engineering of the City of Houston, as each may be amended from time to time.

1.3 License and Permits. Contractor shall obtain, maintain, and pay, at its sole cost and expense, for all licenses, permits, and certificates necessary to perform the Services, including, but not limited to, all professional licenses required by any statute, ordinance, rule, or regulation.

1.4 Supervision. Contractor shall supervise and direct the Services, using Contractor’s best skill and attention. Contractor shall be solely responsible for, and have control over, means, methods, techniques, sequences and procedures for coordinating all portions of the Services under the Agreement, except the limited extent that other, specific instructions concerning such matters are set forth in this Agreement or Scope of Services. Contractor shall enforce strict discipline and good order among Contractor’s employees and other persons carrying out the Services. Contractor shall perform all Services using trained and skilled persons having substantial experience performing the work required under the Agreement. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

1.5 Safety. Contractor represents and warrants that the Services shall be performed in accordance with applicable safety rules and regulations, including but not limited to OSHA standards and directives for setting-up and utilizing platforms, lifts, ladders, scaffolding, safety lines and belts, and operating other, similar equipment. Contractor acknowledges that this Agreement requires Services to be performed in a

variety of weather conditions, with exposure to outdoor elements, and that the Services shall be performed by Contractor regardless of elevation. Contractor shall ensure that its employees, agents, contractors and subcontractors use personal protective equipment, safety harnesses, fall protection equipment, and other equipment in the manner and to the extent required to perform the Services safely. As a safety precaution in Service areas accessible by Facility users or the public, Contractor shall be responsible for the placement and removal of temporary warning and hazard signs.

1.6 Actions of Personnel. Contractor shall be responsible for all aspects of Services performed by its employees, agents, licensees, invitees, and contractors of any tier, including accuracy, quality of performance, service standards, timeliness, and compliance with applicable law. Contractor shall be liable to HFC for the negligent and intentional acts and omissions of Contractor's employees, agents, contractors, subcontractors, and other persons or entities performing portions of the Services for or on behalf of Contractor, including, but not limited to, damage to any vehicles, equipment, fixtures, or other property of any kind or type. Contractor shall, at its sole cost and expense, promptly remedy such damages and restore any property or fixtures thereby affected to the condition existing prior to such damage to the satisfaction of HFC.

1.7 Correction of Services. If any Services performed by Contractor (including its subcontractors) do not meet the standards of this Agreement, as determined by HFC in its reasonable discretion, then Contractor shall correct or modify the Services promptly upon demand from, and at no additional cost to, HFC. If Contractor fails to perform or performs any Service contrary to applicable laws, statutes, ordinances, rules and regulations, and/or lawful orders of public authorities, then Contractor shall be liable for such violation and shall bear the costs attributable to correction.

1.8 Authorized Representative. Contractor shall designate a representative who shall have express authority to bind Contractor with respect to all matters under this Agreement and provide a direct phone number and email address for such authorized representative.

1.9 Parts Warranty. With respect to any equipment, supplies, parts, or other items furnished by Contractor in connection with the Services or this Agreement, Contractor represents and warrants to HFC that: (a) all such items are free of defects in title, design, material, and workmanship; (b) each item meets or exceeds the requirements of the relevant project or work order; (c) any replacement items are new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item being replaced (when the replaced item was new), and will not cause any manufacturer's warranties to lapse or become invalid; and (d) no item or its use infringes any patent, copyright, or proprietary right. Items not conforming to the requirements of this Section shall be deemed defective and repaired or replaced at the sole option of HFC by Contractor, at no cost to HFC. The parties agree that no warranty made by Contractor is intended to limit, nor shall it be construed as limiting in any manner or to any extent, any manufacturer's or supplier's warranty. Upon request from HFC, Contractor agrees to provide reasonable assistance in enforcing such warranties against the manufacturer or supplier at no additional cost to HFC.

1.10 Field Inspection. Execution of this Agreement by Contractor is a representation to HFC that Contractor has visited and inspected each Facility, examined systems and equipment, become familiar with the conditions under which the Services are to be performed, and correlated personal observations with the requirements of the Agreement.

1.11 Conflicts of Interest. Contractor shall not take for itself or divert to a third party any corporate opportunity arising out of this Agreement or discovered otherwise through the use of HFC property or

information. Contractor represents that it is not a party to any outstanding agreement creating or appearing to create a conflict of interest with regard to the Services hereunder or that would preclude Contractor from complying with this Agreement; Contractor shall not enter into any such conflicting agreement during the Term unless prior approved by HFC in its reasonable discretion.

## ARTICLE 2: TERM AND PAYMENT

2.1 Fees. HFC agrees to pay Contractor for its Services in accordance with the fees set forth in **Exhibit “C” [TBD based on Pricing Form in final Agreement]** to this Agreement. Contractor acknowledges that the quantities/frequencies set forth in this Agreement are estimates only. Contractor acknowledges and agrees that HFC has not and shall not represent a guaranteed minimum payment, profit, or quantity/frequency of Services. HFC shall not be held liable for contractual agreements/obligations or damages incurred by Contractor relating to such quantities/frequencies in any manner or to any extent.

2.2 Reimbursable Expenses. HFC agrees to reimburse Contractor at cost for trees, shrubs, groundcover, flowers, and other items planted by Contractor in landscaped areas of the Facilities, as well as irrigation system components (e.g., sprinkler heads) required to perform the Services in the manner and to the extent (a) allowed under this Agreement, including the Scope of Services; (b) prior-approved, in writing, by an HFC General Manager; and (c) subject to restrictions and limitations provided in this Section. Contractor shall include authorized reimbursable expenses on the appropriate invoice, as directed by HFC. Contractor shall use its best efforts to seek and obtain the best value for HFC in the procurement of any item for which Contractor will seek reimbursement. Notwithstanding the foregoing or any provision in this Agreement to the contrary, if the cost of any specific item will or is reasonably expected to exceed \$3,000, or in the event that the total cost of planted items and components in a specific calendar month will or is reasonably expected to exceed \$5,000, then Contractor shall provide an advance estimate to the HFC Purchasing Agent and observe, comply with, and abide by procurement methods approved by and acceptable to General Counsel for HFC.

2.3 Invoice Requirement. Contractor will be paid on the basis of, and in response to, separate monthly invoices submitted by Contractor to each HFC General Manager, subject to their individual review and approval. Each such invoice shall (a) be Facility-specific (except to the extent HFC directs the Contractor to combine Facilities); (b) itemize and detail all Services performed and related charges; (c) itemize and detail any Task Order or reimbursable expenses, and include all supporting documentation confirming that such amounts are invoiced at cost and procured in accordance with Section 2.2 of this Agreement; and (d) include such other detail as HFC may require.

2.4 Invoice Procedures. Invoices shall be submitted electronically by the eight (8th) calendar day of the month following each month in which services are performed. HFC shall make payment to Contractor within 30 calendar days of receipt and approval by HFC of such invoices.

2.5 Invoice Disputes. If any item in any invoice submitted by Contractor are disputed by HFC for any reason, including lack of supporting documentation, then HFC shall temporarily delete the disputed item and pay the remaining amount of the invoice; provided, however, that HFC shall promptly notify Contractor of the dispute and request clarification and/or remedial action. After any dispute shall have been settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on an invoice for the disputed item only.



2.6 Taxes. HFC is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to HFC must not contain assessments of any of these taxes. HFC will furnish an exemption certificate and federal tax identification number to Contractor if requested.

2.7 Payment of Employees and Subcontractors. Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees and contractors of any tier. Contractor is solely responsible for the payment of overtime wages in accordance with applicable law and such obligation shall not increase the amount due and payable by HFC in any manner or to any extent. Failure of Contractor to pay its employees or contractors of any tier as required by law shall constitute a material default under this Agreement for which Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement. Contractor shall scrutinize for validity and accuracy all invoices received from its contractors of any tier for any item or service made reimbursable under this Agreement.

2.8 Records. Contractor shall maintain true, complete and accurate documentation on any and all charges payable or reimbursable by HFC under this Agreement. Books, records and documents of the Contractor, insofar as they relate to services performed or money received under this Agreement, shall be maintained by Contractor for a period of three calendar years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by HFC or its designee. These records shall be maintained in accordance with generally accepted accounting principles. Contractor shall not combine or comingle any accounts, records, reports, statements, ledgers, billings, invoices, receipts, collections, or other documents of any nature whatsoever pertaining to HFC or the Facilities with any similar or dissimilar record or document pertaining to any other contract, agreement, account, or understanding to which Contractor is a party.

2.9 Term. The term of this Agreement shall begin on **December 12, 2020** and end on **December 31, 2025** ("Term"). HFC may, in its sole discretion, extend the Term by up to an additional six calendar months, on the same terms and conditions as set forth herein, by notifying Contractor in writing of such extension.

### **ARTICLE 3: INSURANCE**

3.1 Insurance Requirements. With no intent to limit Contractor's liability under the indemnification provisions hereof, Contractor shall provide and maintain, and shall require its contractors and subcontractors to maintain, for the full duration of the Term, including any extension thereof, at least the following insurance and available limits of liability:

- a. Commercial General Liability, including broad form coverage, contractual liability, bodily injury/death, and property damage in amounts not less than \$1,000,000 each occurrence and a \$2,000,000 aggregate;
- b. Automobile Liability, with a combined single limit of \$1,000,000 per occurrence;
- c. Workers' Compensation with statutory limits (Contractor shall not self-insure for Workers' Compensation); and
- d. Employer's Liability, with limits of \$1,000,000 for each accident, disease limits of \$1,000,000 per policy and \$1,000,000 per employee.

3.2 Additional Insured Parties. Each policy, except those for Workers' Compensation and Employer's Liability, must include an additional insured endorsement in favor of HFC and the City of Houston on the original policy and all renewals or replacements during the term of this Agreement.

3.3 Waiver of Subrogation. Each policy must contain an endorsement approved by HFC waiving any claim or right in the nature of subrogation in favor of HFC and the City of Houston on the original policy and all renewals or replacements during the term of this Agreement.

3.4 Rating. The issuer of any policy shall have a Certificate of Authority to transact insurance business in Texas or shall be an eligible non-admitted insurer in the State of Texas and have an A.M. Best's rating of at least A- with a financial size category of Class VI or better, according to the most current edition of Best's Key Rating Guide, Property-Casualty United States.

3.5 Premiums and Deductibles. Contractor shall be solely responsible for payment of all insurance premiums hereunder. Contractor shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for same against HFC, its officers or employees.

3.6 Primary Insurance. Each policy hereunder, except Workers' Compensation, shall be primary and noncontributory to any other policies of insurance which may be available to HFC with respect to claims arising in connection with this Agreement.

3.7 Certificates of Insurance. Contractor shall deliver a certificate of insurance evidencing all of the policies, endorsements and requirements set forth in the Agreement within 10 calendar days of the Effective Date and annually thereafter, or immediately upon demand from HFC. Neither the issuance of any insurance policy required under this Agreement nor the minimum limits specified herein shall be deemed to limit or restrict in any manner that liability of Contractor under or out of this Agreement and Contractor shall be liable for any loss, damage or liability suffered or incurred by HFC as the result of the failure of Contractor to maintain or cause to be maintained the types or amounts of insurance required to be maintained under this Agreement.

3.8 Subcontractor Insurance. Contractor shall ensure that its contractors of any tier provide insurance of the types and amounts commensurate with the foregoing requirements, including Commercial General Liability limits of \$1,000,000 per occurrence with a \$2,000,000 and Automobile Liability limits of \$1,000,000 per occurrence.

#### **ARTICLE 4: LIMITATION OF LIABILITY**

4.1 Release. **CONTRACTOR AGREES TO AND SHALL RELEASE HFC, ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AND AGENTS FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE BY CONTRACTOR UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED IN PART BY THE NEGLIGENCE OF HFC CONCURRENTLY WITH CONTRACTOR.**

4.2 Indemnification. **TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HFC, INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS AND AGENTS, (COLLECTIVELY, "INDEMNITEES") HARMLESS FROM AND AGAINST ALL CLAIMS,**

**CAUSES OF ACTION, LIABILITIES, FINES, JUDGMENTS, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) (COLLECTIVELY, "CLAIMS") FOR INJURY, DEATH, DAMAGE, OR OTHER LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE OF SERVICES UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE CLAIMS CAUSED BY OR RELATING TO CONTRACTOR AND/OR ITS ANY IF ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY, "CONTRACTOR'S") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE (EXCLUDING CLAIMS CAUSED BY THE SOLE OR GROSS NEGLIGENCE OF INDEMNITEES); AND ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL EMPLOYMENT LAWS, INCLUDING WITHOUT LIMITATION, ANY AND ALL CLAIMS BROUGHT AGAINST INDEMNITEES BY CONTRACTOR'S PERSONNEL AND/OR GOVERNMENT AGENCIES ARISING FROM, RELATING TO, OR INVOLVING SERVICES OF CONTRACTOR'S PERSONNEL UNDER THIS AGREEMENT.**

**4.3 Limitation of Liability. HFC SHALL NOT BE LIABLE TO CONTRACTOR FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS (DIRECT OF INDIRECT) AND LOST REVENUES HOWSOEVER ARISING, WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT, OR OTHER THEORY OF LIABILITY, EVEN IF HFC HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY SUCH DAMAGES.**

4.4 Notice of Claims. If HFC or Contractor receive notice of any claim or circumstances that could give rise to an indemnified loss, then the receiving party shall give written notice to the other party within 30 calendar days. The notice must include a description of the indemnification event in reasonable detail, the basis on which indemnification may be due, and the anticipated amount of the indemnified loss. This notice does not stop or prevent HFC from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If HFC does not provide this notice within such period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

4.5 Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to HFC. Within 10 calendar days after receiving written notice of the indemnification request, Contractor must advise HFC as to whether or not it will defend the claim. If Contractor does not assume the defense, then HFC may assume and control the defense, and all defense expenses constitute an indemnification loss.

4.6 Continued Participation. If Contractor elects to defend the claim, HFC may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of HFC, unless it would result in injunctive relief or other equitable remedies or otherwise require the Indemnitees to comply with restrictions or limitations that adversely affect the Indemnitees; require the Indemnitees to pay amounts that Contractor does not fund in full; or does not result in the Indemnitees' full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

## ARTICLE 5: DEFAULT AND TERMINATION

5.1 Default. Contractor shall be deemed to be in default under this Agreement due to the occurrence of any of the following events: (a) Contractor fails to perform or observe any material term, condition or requirement under this Agreement; (b) Contractor, or any employee, agent, contractor, or subcontractor of Contractor, violates applicable law in connection with the performance of the Services; (c) Contractor becomes insolvent; (d) All or substantial part of Contractor's assets are assigned for the benefit of its creditors; (e) A receiver or trustee is appointed for Contractor; or (f) Contractor assigns this Agreement without the prior written consent of HFC.

5.2 Remedies. If default by Contractor occurs, then HFC shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, HFC shall have the right, but not the obligation, to cure or cause to be cured on behalf of Contractor any such default, and Contractor shall pay HFC on demand all costs and expenses incurred by HFC in effecting such cure, in addition to all actual damages, losses, costs or expenses incurred by HFC as a result of such default by Contractor.

5.3 Termination for Convenience. HFC reserves the right to terminate this Agreement for convenience at any time by giving 30 calendar days' written notice to Contractor. The right of HFC to terminate this Agreement for convenience is cumulative of all rights and remedies that exist now or in the future. On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the service performed under this Agreement up to the termination date. HFC shall then pay the fees to Contractor for Services actually performed, but not already paid for. **TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE THE SOLE AND EXCLUSIVE REMEDIES OF CONTRACTOR FOR TERMINATION FOR CONVENIENCE BY HFC, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED HEREIN), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM TERMINATION OF THIS AGREEMENT BY HFC FOR CONVENIENCE.**

5.4 Termination by Contractor. Contractor may terminate this Agreement only if HFC defaults and fails to cure the default after receiving written notice thereof. Default by HFC occurs if HFC fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor seeks to terminate the Agreement, then Contractor must deliver a written notice to HFC describing the default and proposed termination date. Such date must be at least 90 days after HFC receives notice. If HFC cures the default before the proposed termination date, then the proposed termination date is ineffective. If HFC does not cure the default before the proposed termination date, then Contractor may terminate this Agreement upon 30 days' notice to HFC and may seek any remedy available under applicable law, subject to the provisions and limitations of this Agreement.

5.5 Remedies Cumulative. The rights and remedies of HFC under this Agreement shall be cumulative. HFC shall have and may exercise all other rights and remedies not inconsistent herewith as provided under applicable law, or in equity. No exercise by HFC of one right or remedy shall be deemed an election, and no delay by HFC shall constitute a waiver, election or acquiescence to any default, breach, violation, or non-performance by Contractor.

## ARTICLE 6: MISCELLANEOUS PROVISIONS

6.1 Diversity Program. Contractor shall make good faith efforts to award subcontracts equal to **20%** of the value of this Agreement to certified, diverse suppliers of good and services in accordance with the Diversity Program established by HFC, which is made a part hereof for all purposes. Contractor shall disclose to HFC the manner and extent to which it has made good faith efforts to achieve such goal and submit reports on forms provided by HFC with each invoice, or as directed by HFC.

6.2 Additions and Deletions. HFC, by means of a written directive to Contractor, may add or delete Facilities or services to or from this Agreement and any items or services provided by Contractor that are reasonably related to the scope of this Agreement. Written notification of the added or deleted Facilities, items or services shall take effect upon Contractor's receipt of such notice or on such other day as specified therein. Charges for deletions shall be excluded from any sums otherwise due under the Agreement as of the date such notice is received by Contractor. Charges for additions shall be provided at the same cost as existing Services under the Agreement or, in the absence thereof, at a reasonable price agreed upon in advance by HFC and Contractor.

6.3 Task Orders. At any time during the Agreement, HFC may issue a written task order to Contractor, in a form approved by the HFC General Counsel, to perform specific projects or ancillary services HFC deems necessary to accomplish the general purposes of this Agreement (each a "Task Order" and collectively "Task Orders"). Each Task Order shall require an authorized signature from both parties and include, as applicable, the following information: (a) A description of the project or services; the date of issuance; a lump-sum or a not-to-exceed amount based on hourly rates; (b) any expenses; (c) a 10-20% retainage; (d) any subcontractors; (e) period of performance/project milestones; (f) a description of the services or tasks to be performed; and (g) any deliverables. Contractor agrees to and shall complete each Task Order in accordance the scope thereof, subject to the terms, conditions and restrictions of this Agreement.

6.4 Environmental Laws. Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency, the Texas Commission on Environmental Quality, and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse HFC for any fines or penalties levied against HFC because of Contractor's failure to comply with Environmental Laws. Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to or from the Facilities except in strict compliance with the Environmental Laws. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable Federal, State, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease lubricants or any ignitable or hazardous liquids, materials, or substances in the storm sewer system or sanitary sewer system or elsewhere on HFC property in violation of the Environmental Laws. Contractor shall provide a Safety Data Sheet for each and every Hazardous Material used in performance of the work on HFC property as required under the Environmental Laws.

6.5 Sponsorship and Advertising. Contractor shall not display or permit to be displayed any advertisement or sponsor information at the Facilities without prior written approval from HFC. The term "sponsor information" includes any third-party name, logo, brand, symbol, motto, trademark, service mark, or any other indicia of service, product and/or corporate identification. Contractor shall not enter into any advertising or sponsorship agreements in connection with this Agreement or otherwise related to the Facilities, including but not limited to sponsoring or supporting an event, HFC licensee, or Facility user

for consideration or name/brand promotion without prior written consent of HFC, as determined by HFC in its sole discretion. Contractor shall not display or use the name, logo, trademark or service mark of HFC in any manner without prior written permission from HFC. This Agreement shall not be construed to restrict or otherwise affect the right of HFC to use third party services (including but not limited to competitors of Contractor) or enter into agreements relating to advertising or sponsorship in any manner.

6.6 Force Majeure. Timely performance by both parties is essential to this Agreement. However, neither party will be liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by an occurrence of Force Majeure. For purposes of this Agreement, the term "Force Majeure" shall mean fires, floods, hurricanes, tornadoes, explosions, war, terrorism, and the acts of a superior governmental or military authority. The term Force Majeure does not include strikes, slowdowns or other labor disputes; changes in general economic conditions, such as inflation, interest rates, economic downturn, or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Relief is not applicable unless the affected party uses due diligence to remove the Force Majeure as quickly as possible and provides the notice describing the actual delay or non-performance incurred within 20 calendar days after the Force Majeure ceases. An occurrence of Force Majeure shall not extend the Term. Without limiting the foregoing, HFC further reserves the right, due to an occurrence of Force Majeure or other cause beyond the control of HFC, to suspend performance by Contractor at one or more Facilities for such period of time as HFC may determine in its sole discretion, and Contractor acknowledges and agrees that fees for Services or other payments of any kind or type shall abate for the duration of such period. **CONTRACTOR AGREES TO AND SHALL WAIVE ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSS OR OTHER DAMAGES RESULTING FROM SUSPENSION OF SERVICES OR TERMINATION OF THIS AGREEMENT DUE TO FORCE MAJEURE, EXCEPT FOR AMOUNTS DUE HEREUNDER UP TO THE TIME SERVICES WERE SUSPENDED OR TERMINATED.**

6.7 Notices. Notices to either party to the Agreement must be in writing and must be delivered by hand, United States registered or certified mail, return receipt (or electronic return receipt) requested, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

6.8 Independent Contractor. HFC and Contractor agree that they do not intend to form, and this Agreement shall not be construed as creating, a partnership or joint venture under any circumstances. Neither party hereto shall have any authority, in any manner or to any extent, to bind the other party. With respect to each other, the parties shall be independent contractors for all purposes.

6.9 Venue and Laws. Contractor shall strictly comply with all applicable laws, ordinances, codes, and regulations that affect performance by Contractor hereunder. This Agreement shall be construed in accordance with the laws of the State of Texas without regard to conflict of law principles. Any litigation in connection with this Agreement shall be in a court of competent jurisdiction in Harris County, Texas.

6.10 Non-Waiver. Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

6.11 No Liens or Encumbrances. Contractor shall keep the Facilities free and clear of all liens and encumbrances resulting from any action of Contractor or in connection with the Services.

6.12 Ambiguities. If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

6.13 Non-Exclusivity. Services under this Agreement are non-exclusive, and HFC reserves the right to contract, license, grant, or allow other third-parties persons and entities to perform similar or dissimilar services in its sole discretion without incurring any liability or obligation whatsoever to Contractor.

6.14 Survival. The parties shall remain obligated to each other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration of the Term or termination of the Agreement.

6.15 Assignment and Severability. Contractor shall not assign this Agreement in whole or in part without the prior written consent of HFC. HFC reserves the right to assign this Agreement in whole or in part, including any or all rights granted hereunder, at any time upon written notice to Contractor. If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

6.16 Entire Agreement. This Agreement, including the exhibits attached hereto, represents the entire and integrated agreement between HFC and Contractor with regard to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. In the event of a conflict between the Agreement and the Exhibits, this Agreement shall control and prevail. This Agreement may not be altered or amended except in a writing executed on behalf of HFC and Contractor.

[signature page to follow in final Agreement]

**EXHIBIT “A”**  
**SCOPE OF SERVICES**

Contractor agrees to and shall provide all labor, supervision, materials, equipment, insurance, fuel, tools, machinery, transportation, and other goods and services necessary to produce and maintain healthy and aesthetically-pleasing lawn, groundcover, annual and perennial plants, shrubbery, and trees in landscaped areas of the Facilities for the duration of the Term in strict accordance with the terms and conditions of the foregoing Agreement and the following Scope of Services.

**Article 1. Definitions**

As used in this Agreement, the following terms have the meanings set out below:

“**Facility**” (and collectively, “**Facilities**”) means the George R. Brown Convention Center; Wortham Theater Center; Miller Outdoor Theatre; Partnership Tower; Lynn Wyatt Square; Lots C and H; Root Memorial Square Park; Sweeney Clock Triangle; TBH; Tundra Garage; and such other buildings, garages, lots, and properties as HFC may designate during the Term in the manner provided in this Agreement.

“**Fish Plaza**” means the outdoor plaza and greenspace in front of Wortham Theater Center on Texas Ave. in downtown Houston. (See also Wortham Theater Center.)

“**George R. Brown Convention Center**” means the convention and meeting facility located at 1001 Avenida de las Americas, Houston, Texas 77010 and adjacent grounds, including the facility plaza, wharf and median of Avenida de las Americas from Polk St. to Lamar and from the Avenida Central Garage Entrance to Rusk St.; Parking Lot 2, bounded by Polk, Clay, Hamilton, and Chenevert Streets; the employee/contractor lot fronting on Hamilton Street between Polk and Clay Streets; and the I-69 corridor between Polk St. and Leeland St. on both sides. Landscaped areas at this Facility include turfgrass, shrubs, groundcover, perennial plants, 16 sugar gum trees, 29 sycamore trees, 25 oak trees, and 24 planters.

“**HFC General Manager**” means the individual designated by HFC to serve as general manager of one or more Facilities to oversee day-to-day operations.

“**Jones Hall**” means the performing arts venue located at 615 Louisiana St., Houston, Texas 77002 now known as Lynn Wyatt Square.

“**Lots C and H**” means the surface parking lots located on the east and west sides of Houston Avenue at Memorial Drive. Landscaped areas at this Facility include turfgrass, trees, groundcover, and perennial plant beds.

“**Lynn Wyatt Square**” means the landscaped city block and venue, formerly known as Jones Plaza, bounded by Louisiana St., Capitol St., Smith St., and Texas Ave., to be redeveloped into an urban greenspace featuring fountains, restaurants, performance space, and other amenities. As of the Effective Date, this Facility includes trees, shrubs, groundcover, perennial plants and containerized plants.

“**Miller Outdoor Theatre**” means the outdoor performing arts facility and adjacent grounds located in Hermann Park in Houston, having a street address of 600 Hermann Park. Dr., Houston, Texas 77030. Landscaped areas at this Facility include turfgrass, shrubs, perennial plants, and trees.



“**Partnership Tower**” means the 10-story office tower located at 701 Avenida de las Americas, Houston, Texas 77010 and adjacent grounds, including the attached parking garage. Landscaped areas at this Facility include turfgrass, shrubs, groundcover, perennial plants, and 37 oak trees.

“**Root Memorial Square Park**” means the park located in downtown Houston bounded by Clay, Bell, Austin, and La Branch Streets. Landscaped areas at this Facility include turfgrass, shrubs, groundcover, perennial plants, containerized plants and trees.

“**Sweeney Clock Triangle**” means the small landscaped area located on a triangular esplanade on Bagby Street between Capitol and Rusk Streets and including, for purposes of this Agreement, the heritage oak tree located at the corner of Bagby St. and Capitol St. Landscaping includes trees, shrubs, groundcover and perennial plants.

“**Theater District Parking Garage**” means the interconnected, multi-entry underground parking facility located at 511 Rusk St.

“**TBH**” means the performing arts theater located at 333 S. Jensen Dr., Houston, Texas 77010. Landscaped areas at this Facility include turfgrass, shrubs, groundcover, perennial plants, and trees.

“**Tundra Garage**” means the parking facility located at 1515 Jackson St. serving the Toyota Center and area businesses. Landscaped areas at this Facility include flower beds, groundcover and 40 oak trees.

“**Wortham Theater Center**” means the performing arts venue located at 501 Texas Ave., Houston, Texas 77002 and adjacent areas, including Fish Plaza and, for purposes of this Agreement, the entrances to Theater District Parking Garage. Landscaping includes turfgrass, trees, shrubs, groundcover, perennial plants, and containerized plants.

## **Article 2. Personnel Requirements**

2.1 Service Manager. Contractor shall, at its sole cost and expense, designate and appoint one its full-time employees, who shall have at least five years’ experience in landscape maintenance, to serve as the point-of-contact for all matters arising under this Agreement, including but not limited to supervising and directing the services, scheduling, investigating and responding to complaints, and ensuring the timely, safe and effective performance of the Services in all respects. Contractor represents and warrants to HFC that such manager is authorized to represent and act for Contractor with regard to all matters pertaining to this Agreement or arising in connection with the Services. If the employment of the service manager designated and appointed by Contract terminates for any reason, then Contractor shall, within 10 calendar days, notify HFC in writing and provide the name and contact information for the replacement service manager.

2.2 Direct Contact. Contractor represents and warrants that the service manager designated and appointed by Contract shall be available immediately by phone, email, and text message Monday through Friday from at least 9:00 a.m. to 5:00 p.m. (excluding holidays). Outside of such times, Contractor guarantees a specific, personal response within 30 minutes, with a direct and immediate contact made available to HFC for use in the event of an emergency at all times. To ensure uninterrupted lines of communication with HFC, Contractor shall, at its sole cost and expense, provide and equip its designated and appointed service manager with a smart phone and desktop or laptop computer able to access the internet and with standard office software programs installed and operable.

2.3 Scheduling. Contractor shall prepare a monthly staffing and Service schedule for each Facility, made available to the HFC General Managers upon request, to maximize efficiency and ensure that the requirements of this Agreement are met. Contractor shall anticipate all conventions, performances, concerts, sporting events, banquets, and other events likely to affect use of the Facilities and Service requirements. Generally, Services shall be performed between the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, excluding holidays and routine Services performed weekly from April-October, bi-weekly from November to March; provided, however, that the Contractor shall coordinate each Service schedule with the HFC General Managers to avoid any disruption of business or recreational use of the Facilities. Further, the HFC General Managers shall have the right, in their sole discretion, to suspend, delay or interrupt the Services due to such disruption of business or use and Contractor shall not be entitled to additional compensation for such reason.

2.4 Service Verification. HFC General Managers shall have the right to require Contractor personnel to check-in and check-out upon arrival at, and just prior to departure from, a Facility. Further, HFC General Managers shall have the right to require Contractor to complete and sign a statement noting, at a minimum, the date and specific tasks completed during each Service visit, in a form approved by HFC.

2.5 Uniform. Contractor shall ensure, at its sole cost and expense, that its personnel wear a standardized uniform, including appropriate summer, winter and all-weather outdoor clothing, such as raingear.

2.6 Tools. Contractor shall, at its sole cost and expense, provide, use and maintain all tools and equipment necessary for the performance of the Services. Tools and equipment shall be operated and maintained in accordance with the manufacturer's instructions, free from leaks, and with safety features such as side discharge covers intact. HFC shall not be liable for damage, loss, wear, or breakage of tools, equipment, materials, supplies, or other personal property belonging to the Contractor, its employees, agents, contractors, or subcontractors. Contractor shall store all tools, equipment, materials, and supplies necessary for the performance of the Services off-site at its sole cost and expense. Contractor acknowledges that HFC shall not provide any storage areas to Contractor at the Facilities.

2.7 Identification. Contractor personnel, including subcontractors, shall be required to carry and have clearly displayed on their person a photo identification badge at all times when present or performing Services inside of the Facilities or in any areas not open to the general public or otherwise restricted. Contractor shall issue such identification badges at its sole cost and expense. Each badge shall include, at a minimum, the company name, first and last name of the individual, and a recent photographic image of the individual.

2.8 Meetings. Throughout the Term, HFC shall require Contractor to attend meetings to discuss the Services, identify and resolve performance issues, and advise HFC on matters related to the Services. HFC will notify Contractor either orally or in writing and will designate the time, date, location, requested attendees, and the general purpose of the meeting. Contractor attendees must be present at any such performance meeting for its duration at no additional cost to HFC. Contractor shall prepare materials covering the topics discussed in a form satisfactory to HFC.

2.9 Disaster Mitigation. In the event of an actual or impending disaster or emergency, Contractor shall proactively take all appropriate actions under the circumstances to protect the health, safety and welfare of all persons, as well as to prevent, limit or otherwise mitigate damage to the Facilities, Equipment and other property. As an essential part of the Services under this Agreement, Contractor shall direct its employees to assist HFC with the deployment of flood gates, barriers and all other mitigation efforts on an as-needed basis and include employees in periodic training and simulation exercises held by HFC.

### **Article 3. Turfgrass Maintenance and Groundskeeping**

3.1 Contractor shall mow, trim, edge and maintain turfgrass areas at the Facilities in accordance with the provisions of this Article so as to produce a neat, well-kept appearance of all such areas.

3.2 Before mowing, Contractor shall collect and remove litter, leaves, twigs, and debris from areas to be mowed.

3.3 Contractor shall mow turfgrass to a height of two inches, or as specified by the HFC General Managers.

3.4 Contractor shall ensure that mowing is done in such a way that clippings do not drift and are not blown into beds, tree rings, or storm sewers. To prevent fraying, Contractor shall keep mower blades sharp and replace blades as needed.

3.5 After mowing, Contractor shall remove all clippings and debris from paved areas, vehicles, structures, equipment, and lighting systems.

3.6 Contractor shall manicure edge all turfgrass areas adjacent to walks, curbs, drives, and tree-wells using a blade edger to maintain an aesthetically-pleasing appearance.

3.7 Using a string trimmer, Contractor shall trim turfgrass around all obstacles (e.g., signs, posts, trees, etc.) at a level to match grass height in open turfgrass areas; provided, however, that Contractor shall hand-trim turfgrass away from sprinkler heads to eliminate deflection.

3.8 Throughout the turfgrass areas, Contractor shall hand-pull weeds to remove the entire plant and roots and dispose of same.

3.9 Contractor shall use due diligence to control fire ants at the Facilities by chemically (i.e., “spot”) treating ant mounds after each mowing throughout turfgrass and all other landscaped areas; lowering ant mounds by tamping such mounds to the existing grade once infestations have been controlled; and, as a preventative measure, treating such areas with fire ant insecticide two-to-three times per year. Except as noted in the immediately preceding sentence, Contractor shall apply pesticide treatments to control insects or disease affecting the turfgrass and all other landscaped areas as needed, after notice to the HFC General Manager.

3.10 Contractor shall use due diligence to control weeds by applying pre- and post-emergent herbicide as needed throughout the Facilities, including all turfgrass, other landscaped areas, and the cracks/expansion joints of paved and gravel areas. Except as noted in the immediately preceding sentence, Contractor shall apply herbicide to control invasive or unwanted vegetation affecting the turfgrass and all other landscaped areas as needed, after notice to the HFC General Manager.

3.11 All litter, clippings, trimmings, weeds, dead or diseased plants/branches, or other trash resulting from the Services are the property and responsibility of Contractor, who shall be solely and exclusively liable for their transportation and disposal in a responsible manner so as to ensure the safety of the environment and public health, and in accordance with applicable law.

3.12 At Miller Outdoor Theatre, once annually Contractor shall evenly and mechanically spread twenty cubic yards of sharp sand on the hill area within the concrete sidewalk. Sand must be screened clear of all clay, rocks, debris, etc.

3.13 At Miller Outdoor Theatre, once annually Contractor shall evenly and mechanically spread a sports field root zone mix with organic amendments on the entire hill area (i.e., the seated area within the concrete sidewalk and the back/sides of the hill down to grade level).

3.14 At Miller Outdoor Theatre, once annually Contractor shall top dress twenty cubic yards of ¼" minus decomposed granite (red-pink in color) on pathways leading to the Facility, or as directed by the HFC General Manager. Contractor shall compact decomposed granite mechanically. To ensure compliance with such requirements, Contractor shall obtain written approval from the HFC General Manager prior to ordering decomposed granite for this task.

3.15 At Miller Outdoor Theatre, four times annually (Feb., Apr., Jun., and Aug.), Contractor shall aerate the entire hill area (i.e., the seated area within the concrete sidewalk and the back/sides of the hill down to grade level) to alleviate surface compaction, promote thatch removal and decomposition, and improve water and fertilizer penetration. Contractor shall aerate such turf areas using a hollow tine core aerator that will pull plugs not less than six inches apart and three inches deep.

3.16 At Miller Outdoor Theatre, four times annually (Feb., Apr., Jun., and Aug.), Contractor shall apply a balanced fertilizer (16-4-8) that contains 5% iron, 13% elemental sulfur, .3% zinc with the nitrogen source consisting of 30% quick release, 50% Nitroform, and 20% Milorganite (or acceptable substitutes); ensure that all turfgrass areas receive 3-6 lbs. of nitrogen per year, applied at a rate of .75 to 1.5 lbs. N/1,000 square feet during each application; modify these specifications as necessary if deficiencies are identified in the results of soil analysis, and/or according to specific turfgrass needs; distribute applications uniformly over all lawn areas and have them watered immediately; take care not to apply fertilizer to paved areas and in the event this does occur, remove all residue before the end of the day; and adjust fertilization schedules as needed in accordance with temperature and weather conditions, or as directed by the HFC General Manager.

3.17 At Miller Outdoor Theatre, Contractor shall mow the entire hill area (i.e., the seated area within the concrete sidewalk and the back/sides of the hill down to grade level) using a commercial grade reel mower, such as a John Deere 7200 Precision Cut model. Any equipment on property particularly tractors utilized for aeration or spreading sand must have turf tires.

#### **Article 4. Perennial Plant, Shrub and Groundcover Maintenance**

4.1 Contractor shall prune and trim perennial plants, shrubs and groundcover at the Facilities in accordance with the provisions of this Article to maintain their natural appearance, with branches and stems cut at slightly varying lengths, in order to extend the life of the plant and to stimulate future growth, or to remove limbs from obstructing walkways, pathways, signs, lights, sprinklers, etc.

4.2 Throughout the perennial plant beds and shrub and groundcover areas, Contractor shall, as needed, collect and remove litter, leaves, twigs, and debris; hand-pull weeds to remove the entire plant and roots; remove expired blooms and dead/discolored leaves; cut-back ornamental grasses; fertilize shrubs and groundcover; and divide or thin plants that have become overgrown or crowded.

4.3 Using sharp pruners or loppers, Contractor shall prune all free-form shrubs as needed to create and

promote dense, uniform, and aesthetically-pleasing growth.

4.4 Using sharp hedge trimmers, Contractor shall shear all formal shrubs as needed to create and promote dense, uniform, and aesthetically-pleasing growth.

4.5 Contractor shall not use string trimmers to prune shrubs, vines, ivy, or groundcover.

4.6 Contractor shall prune azaleas immediately after blooms have expired and trim branches to no more than one-third of their existing length. Once annually, in the spring or fall, Contractor shall apply a specially-formulated fertilizer to all azalea beds (15-9-9 with 10% sulfur and 5% iron) at a rate of one pound per 100 square feet, irrigate immediately after application, and ensure no residue remains on paved areas.

4.7 If severe cutting-back of shrubs is necessary, in accordance with best horticultural practices, then Contractor shall perform same during the early spring, prior to the emergence of new growth.

4.8 After pruning and trimming of perennial plants, shrubs and groundcover, Contractor shall remove all clippings and debris from paved areas, vehicles, structures, equipment, and lighting systems.

4.9 Twice annually (Jun. and Sep., or as specified by the HFC General Managers), Contractor shall evenly apply an organic, pest- and disease-free mulch on all perennial plant beds and shrub and groundcover areas. Mulch shall be layered at a depth of one-to-two inches, but kept at least two inches from the base of trees and woody plants in such beds or areas. Contractor shall periodically rake mulch to loosen it and break up any water-impermeable layers.

4.10 Twice annually, Contractor shall apply an approved fertilizer (such as NutriStar or an equivalent) at a rate of two pounds per 100 square feet to all perennial plants and shrub and groundcover areas (except azaleas and roses), irrigate immediately after application, and ensure no residue remains on paved areas.

4.11 Contractor shall keep any hanging baskets and all containerized plants at the Facilities first-class condition in a manner substantially similar to Services performed on in-ground plantings to ensure their health and vitality.

4.12 At Lynn Wyatt Square, bimonthly Contractor shall hand-prune the ivy at the nodes, with the cut hidden, to maintain a neat and manicured appearance.

4.13 At Wortham Theater Center, bimonthly Contractor shall hand-prune the ivy at the nodes, with the cut hidden, to maintain a neat and manicured appearance.

## **Article 5. Irrigation System Operation and Maintenance**

5.1 Contractor shall maintain irrigation systems at the following Facilities in accordance with this Article: George R. Brown Convention Center, Sweeney Clock Triangle, Lynn Wyatt Square, Miller Outdoor Theatre, Root Memorial Square Park, and Wortham Theater Center.

5.2 Contractor shall monitor the irrigation systems for leaks, inoperative sprinkler heads, improper spray patterns, appropriate water volume and watering schedule for zone-specific plant material. Contractor shall promptly adjust the system to eliminate deflection and ensure complete and proper coverage of all landscaped areas in accordance with best industry practices.

5.3 Contractor shall be responsible for replacing damaged, worn, or malfunctioning sprinkler heads with like parts and repairing above-ground leaks at no additional cost to HFC. Any other repairs shall require the prior authorization of the HFC General Managers.

5.4 Except as provided in Section 5.3, Contractor acknowledges and agrees that irrigation system parts shall be procured, at the direction of the HFC General Managers in their discretion, in one or more of the following methods: (a) Purchased by HFC from a third party and conveyed to Contractor at a reasonable location determined by HFC; or (b) Supplied by a vendor offering the lowest of three bids received by Contractor (to be included in Contractor's invoice to HFC at actual cost).

5.5 The installation of new irrigation lines or repairs requiring underground excavation are excluded from the Services, but may be performed by a third-party contractor selected by HFC, or by Contractor as part of a Task Order.

5.6 Contractor shall turn irrigation systems on and off in accordance with a schedule prepared by Contractor and approved by the HFC General Managers, or as requested by the HFC General Managers, during normal business hours (7:00 a.m. to 7:00 p.m., Monday through Friday, excluding holidays).

5.7 When there is risk of frost damage, Contractor shall winterize the automated irrigation system using a high-volume air compressor to evacuate water from all main, lateral lines, valves and heads. All zones must be turned on in sequence until water is evacuated and the process must be repeated a second time. Contractor shall repair any damage to the system caused by its operation at no cost to HFC.

5.8 Contractor shall charge the system after the last threat of frost, depending on weather conditions. All zones must be operated from the controller and the system must be visually checked for leaks, broken heads, head adjustment, and for properly functioning electric valves. Contractor shall notify the appropriate HFC General Manager of any repairs required.

5.9 At Jones Hall, Contractor shall hand-water all trees and plants (street and courtyard level) once per week, or as needed to maintain their health and vitality. To avoid inconvenience to lunchtime crowds, Contractor shall water such areas outside of the 11:00 a.m. to 2:00 p.m. window.

## **Article 6. Tree Maintenance**

6.1 Contractor shall maintain trees at the Facilities to the limited extent set forth in this Article. For the avoidance of doubt, tree topping, tree felling, and stump grinding are excluded from the Services, but may be performed by a third-party contractor selected by HFC, or by Contractor as part of a Task Order.

6.2 Contractor shall keep trees and the areas within tree grates free of trash and debris as part of the regularly scheduled debris removal services under this Agreement.

6.3 Contractor shall prune and trim existing trees at the Facilities as needed or as directed by the HFC General Managers, to (a) ensure unobstructed passage to pedestrians and motor vehicles; (b) prevent concealment of signs or fixtures; (c) remove dead/diseased branches less than three inches in diameter; (d) remove sucker growth; and (e) allow reasonable clearance from buildings. Tree maintenance on the four live oak trees at Miller Outdoor Theatre and the heritage oak tree at the corner of Bagby St. and Capitol St. shall further include pruning and trimming to prevent or remediate cracked or broken limbs, subject to the pre-authorization and approval requirements set forth in this Article.

6.4 In addition to the foregoing, Contractor shall prune crepe myrtles annually to remove remaining seedpods and to selectively remove the terminal portion of secondary branches.

6.5 Contractor is responsible for the application of pesticide treatments to control insects or disease affecting the trees.

6.6 Contractor shall stake young trees as needed or as directed by the HFC General Managers in an inconspicuous manner using natural-colored materials to ensure root protection and straight growth.

6.7 At Jones Hall, twice annually (May and Nov.), Contractor shall fertilize all trees at recommended rates according to best horticultural industry practices and manufacturer's recommendations.

6.8 At Miller Outdoor Theatre, no work shall be performed on the four live oak trees (to the immediate left of the stage, to the immediate right of the stage, city-designated Oak #18, and city-designated Oak #19) without the prior written approval of the HFC General Manager and its designated arborist and/or the appropriate City of Houston representative.

6.9 At Miller Outdoor Theatre, twice annually, Contractor shall deep-root fertilize six oak trees (to the immediate left of the stage, to the immediate right of the stage, City-designated Oak #18, and City-designated Oak #19) and two Legacy oaks to the east and west of concession facility. Work will not be performed until formal onsite examination and written instructions are received from the Houston Parks and Recreation Department Urban Forester. Urban Forester will approve designated arborist to perform scope of work.

6.10 At Root Memorial Square Park, twice annually (May and Nov.), Contractor shall fertilize all trees at recommended rates according to best horticultural industry practices and manufacturer's recommendations.

6.11 At the heritage oak tree located at the corner of Bagby St. and Capitol St., no work shall be performed without the prior written approval of the HFC General Manager and its designated arborist and/or the appropriate City of Houston representative

6.12 At the heritage oak tree located at the corner of Bagby St. and Capitol St., twice annually (Jun. and Sep., or as specified by the HFC General Manager), Contractor shall evenly apply an organic, pest- and disease-free mulch on all shrub and groundcover areas. Mulch shall be layered at a depth of one-to-two inches, but kept at least two inches from the base of the tree. Contractor shall periodically rake mulch to loosen it and break up any water-impermeable layers.

6.13 At Wortham Theater Center, twice annually (May and Nov.) Contractor shall fertilize all trees at recommended rates according to best horticultural industry practices and manufacturer's recommendations.

## **Article 7. Reporting Requirements**

7.1 Contractor shall immediately report to the appropriate HFC General Manager any accident, injury, or near miss occurring during the performance of the Services and provide all reasonable assistance in the preparation of a written incident report.

7.2 Damage caused in whole or in part by Contractor, its employees, agents, contractors or subcontractors during the performance of the Services shall be reported promptly by Contractor immediately to the appropriate HFC General Manager.

7.3 If Contractor observes graffiti or vandalism at the Facilities during the performance of the Services, then Contractor shall report same promptly to the appropriate HFC General Manager and provide all reasonable assistance in the preparation of a written incident report.

7.4 Due to its age and historic significance, Contractor shall immediately contact the HFC General Manager to report any material change to the condition of the heritage oak tree located at the corner of Bagby St. and Capitol St. (e.g., storm damage, vandalism, or insect infestation).

7.5 During the performance of the Services, Contractor shall be diligent and continuously alert for signs and presence of insects or disease at the Facilities and, if suspected or observed, report same in writing to the appropriate HFC General Manager and take such remedial action as reasonable and necessary under the circumstances (e.g., application of insecticide, herbicide, or fungicide, and/or removal of affected plants). If Contractor fails to observe or report such presence, then Contractor shall be liable for the cost of replacing plants damaged due to such omission.

7.6 On a monthly calendar basis, Contractor shall conduct a maintenance check of the entire irrigation system located at each Facility and provide a written report to the appropriate HFC General Managers. Contractor shall include in its reports all controller settings for watering start times, station run times, and watering days.

7.7 On a monthly calendar basis, Contractor shall submit a landscaping report to each HFC General Manager detailing the current condition of each Facility and a list of suggested recommendations for corrective actions and/or enhancements, if any.

7.8 During the performance of the Services, Contractor shall be diligent and continuously alert for any indication that soil amendments may be needed to improve vibrancy and vitality of landscaped areas and, if suspected or observed, report same in writing to the appropriate HFC General Manager with a recommendation for soil testing in specified areas and/or immediate remedial action in such areas.

7.9 As needed, upon approval from or at the request of the HFC General Managers, Contractor shall collect separate composite soil samples in accordance with Texas A&M University methods and submit them to an accredited laboratory for testing. Contractor agrees that the cost to HFC for each such soil test shall not exceed the amount stated in Exhibit "C" for soil testing. Contractor shall promptly relay written soil-testing reports to the appropriate General Managers and take such remedial actions (e.g., soil amendments), as they may approve.