



TEXAS GENERAL LAND OFFICE/ VETERANS LAND BOARD

is

REQUESTING PROPOSALS

for

Rehabilitative Therapy Services

for the

Ambrosio Guillen Texas State Veterans Home in El Paso, Texas

REQUEST FOR PROPOSALS NO. X0013891-AW

Class 948 / Items 65, 86

Release Date: December 21, 2017

Deadline for Submission: January 19, 2018 at 2:00 p.m. CT

Solicitation Point of Contact: Angela Wallace, CTPM

Angela.Wallace@GLO.Texas.Gov

You are responsible for checking the Electronic State Business Daily (ESBD) website, <http://www.txsmartbuy.com/sp>, for any addenda to this Solicitation. Please search under Agency Code 305 (Texas General Land Office). The Respondent's failure to periodically check the ESBD will in no way release that Respondent from addenda or additional information resulting in additional requirements of the Solicitation.

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ARTICLE I. EXECUTIVE SUMMARY, DEFINITIONS, AND AUTHORITY

1.1. EXECUTIVE SUMMARY

The Texas General Land Office (GLO), on behalf of the Texas Veterans Land Board (VLB), is seeking proposals from highly qualified Providers for therapeutic rehabilitative services for residents of the Ambrosio Guillen Texas State Veterans Home located in El Paso, Texas.

The El Paso Veterans Home provides skilled nursing care for the benefit of eligible veterans of the United States Armed Forces. The facility is a single-story structure, featuring spacious rooms, dining facilities, activity areas, covered porches, courtyards and landscaped grounds, on-site occupational and physical therapy clinics, and a certified Alzheimer's Care Unit. The El Paso Veterans Home has 160 total resident beds, including 60 beds designated for Alzheimer's and related dementia.

The GLO will consider proposals from firms, joint ventures, or other business arrangements that demonstrate the ability to provide the services, in accordance with applicable federal, state, and local laws and regulations. Respondents must execute **Exhibit A** of this Solicitation, *Affirmations and Solicitation Acceptance*, and complete other items listed on the Submission Checklist to be considered. Additional information on the GLO/VLB and its programs can be found at <http://www.glo.texas.gov/vlb/>.

1.2. DEFINITIONS

“**Addendum**” means a written clarification or revision to the Request for Proposals issued by the General Land Office. Respondents must acknowledge receipt of any addenda in the submission of the Solicitation Response.

“**Affiliate**” means any individual or entity that, directly or indirectly, is in control of, is controlled by, or is under common control with, Respondent. Respondent shall be deemed to control another entity if either possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other entity, whether through the ownership of voting securities, membership interests, by contract, or otherwise.

“**CMS**” means Centers for Medicare and Medicaid.

“**DADS**” means the Texas Department of Aging and Disability Services.

“**El Paso Veterans Home**” means the Ambrosio Guillen Texas State Veterans Home located in El Paso, Texas.

“**ESBD**” means the Electronic State Business Daily, <http://www.txsmartbuy.com/sp>.

“GLO” means the Texas General Land Office. Employees of the VLB are considered employees of the GLO.

“HHS” means Texas Health and Human Services.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, which established a national standard for protecting the privacy and security of individuals’ protected health information, as contemplated under 45 C.F.R. §160.103.

“HUB” means Historically Underutilized Business as defined by Chapter 2161 of the Texas Government Code.

“HUB Subcontracting Plan” or “HSP” means the form required by Texas Government Code §2161.252 and 34 Texas Administrative Code §20.285 for each contract with an expected value of \$100,000 or more, in which Respondents must demonstrate a Good Faith Effort to subcontract with HUBs. The HSP is posted to the ESBD as a separate file accompanying this Solicitation and must be included with the Solicitation Response.

“Medicare Part A” means a health insurance program for persons who are disabled or over age 65 authorized by Title XVIII of the Social Security Act. Part A is Medicare hospital insurance that helps pay for medically necessary inpatient hospital care, and, after a hospital stay (for a limited period of time), for inpatient care in a skilled nursing facility, for home care by a home health agency or hospice care by a licensed and certified hospice agency.

“Medicare Part B” means a health insurance program for persons who are disabled or over age 65 authorized by Title XVIII of the Social Security Act. Part B is Medicare medical insurance that helps pay for medically necessary physician services, outpatient hospital services, outpatient, physical therapy and speech pathology service, and a number of other medical services and supplies that are not covered by the hospital insurance.

“On-Site Representative” or “OSR” means the designated GLO/VLB employee who maintains an office in the Veterans Home to oversee the operations of the Veterans Home on the VLB’s behalf.

“Operator” means the entity contracted to manage and provide all necessary services for the Ambrosio Guillen Texas State Veterans Home, excluding the services requested herein.

“PIA” means the Public Information Act, Chapter 552 of the Texas Government Code.

“Private Pay” means a Resident who uses personal funds to make payments for services provided.

“Provider” means the Respondent awarded a contract pursuant to this Solicitation.

“Resident” means a person who meets the eligibility requirements and is admitted to a Texas State Veterans Home to receive skilled nursing care.

“Respondent” means the entity responding to this Solicitation.

“RFP” means Request for Proposals.

“Service Connected Disability or “SCD” means an injury or illness that was incurred or aggravated during active military service, as defined under 38 U.S.C. §101(16).

“Solicitation” means this RFP.

“Solicitation Response” means the Respondent’s entire response to this Solicitation, including all documents requested in Articles III and V.

“State” means the state of Texas and any state agency; the GLO/VLB or state agency identified in this Solicitation, its officers, employees, or authorized agents.

“TAC” means Texas Administrative Code.

“VA” means the United States Department of Veterans Affairs.

“Veterans Home” means any Texas State Veterans Home. “El Paso Veterans Home” specifically refers to the Ambrosio Guillen Texas State Veterans Home located in El Paso, Texas.

“VLB” means the Texas Veterans Land Board.

1.3. AUTHORITY

The GLO/VLB is soliciting the service listed herein under Chapters 2155-2156 of the Texas Government Code and Chapter 164 of the Texas Natural Resources Code.

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ARTICLE II. SCOPE OF WORK

2.1. SCOPE OF SERVICES

Respondent must demonstrate the ability to perform the services described in this Solicitation and specifically enumerated under this Section in its Solicitation Response. The selected Provider shall be bound to specific terms and conditions found in **Exhibit B**, the GLO's sample contract. These terms and conditions are subject to change prior to the execution of any contract that may result from this RFP.

The selected Provider shall provide therapeutic rehabilitative services, including physical therapy, occupational therapy, and speech language pathology, in accordance with guidelines provided by the Department of Veterans Affairs (VA) and the Centers for Medicare & Medicaid Services (CMS) for Medicare Part A and Part B requirements. Provider must provide the services a minimum of five days per week. Local travel for pre-admission evaluations may be required during the course of any contract resulting from this Solicitation; such travel must adhere to the rates established by the Comptroller of the State of Texas, as outlined in the State of Texas travel guidelines, *TexTravel*.

In the Solicitation Response, Respondent shall describe in detail its experience with, and proposed methodology for, the performance of the following services:

- a) Provision of physical therapy services in accordance with VA and Medicare Part A and Part B requirements;
- b) Provision of occupational therapy services in accordance with VA and Medicare Part A and Part B requirements;
- c) Provision of speech language pathology services in accordance with VA and Medicare Part A and Part B requirements;
- d) Utilization of PointClickCare®, or compatible, cloud-based medical record system that meets HIPAA requirements;
- e) Accurate billing of services to CMS;
- f) Accurate billing of services to the client facility; and
- g) Supply of additional therapeutic equipment to meet the needs of Residents.

Provider shall perform the therapeutic rehabilitative services in compliance with all applicable laws, rules, regulations, standards, and policies of federal, state, and local governments and any other entity that may have jurisdiction. The El Paso Veterans Home is operated by a GLO/VLB-contracted Operator; the Operator is responsible for supervising the performance of all administrative functions necessary to manage and operate the El Paso Veterans Home including comprehensive medical, nursing,

administrative, and social programs. However, the therapeutic rehabilitative services Provider selected pursuant to this Solicitation shall report directly to the GLO/VLB. The GLO/VLB employs an On-Site Representative (OSR) at the El Paso Veterans Home; the OSR oversees the operations of the Veterans Home on the VLB's behalf.

2.2. CONTRACT AND TERM

Any contract resulting from this Solicitation shall be effective as of the date executed by the last Party (the "Effective Date"), and shall remain in effect through August 31, 2020, subject to the conditions set forth herein. The parties may, upon mutual written agreement, renew the contract for two additional three-year terms unless terminated early under the terms and conditions of the contract.

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ARTICLE III. ADMINISTRATIVE INFORMATION

3.1. SCHEDULE OF EVENTS

EVENT	DATE/TIME
Issue Solicitation	December 21, 2017
Pre-Proposal Conference (Optional) 1700 N. Congress Avenue, Room 172 Austin, Texas 78701	January 4, 2018 at 10:00 a.m. CT
Deadline for Submitting Questions	January 10, 2018 at 5:00 p.m. CT
Deadline for Submission of Solicitation Responses	January 19, 2018 at 2:00 p.m. CT
Evaluation Period	January 22, 2018 to January 29, 2018
Oral Presentations	January 30, 2018
Best and Final Offers	January 31, 2018 to February 1, 2018
Contract Development, Negotiation, and Execution	February 4, 2018 to February 18, 2018
Transition / Training Period	February 19, 2018 to February 28, 2018
Selected Provider Commences Operations at TSVH	March 1, 2018

NOTE: These dates represent a tentative schedule of events. The GLO/VLB reserves the right to modify these dates at any time prior to the deadline for submission of Solicitation Responses upon notice posted on the Electronic State Business Daily (ESBD) website at: <http://www.txsmartbuy.com/sp>. Please search under Agency Code 305. Any modification of dates after the deadline for submission of Solicitation Responses will not be posted.

3.2. INQUIRIES

3.2.1 Contact

All requests, questions, or other communications about this Solicitation shall be made in writing to the GLO's Purchasing Department, addressed to the person listed below.

Name	Angela Wallace, CTPM
Title	Purchaser
Address	1700 N. Congress Ave., Austin, Texas 78701
Phone	800.998.4456 or 512.463.5189
Fax	512.463.1795
Email	Angela.Wallace@GLO.Texas.Gov

Notwithstanding the above, Respondents may direct questions about the state's Historically Underutilized Businesses (HUB) Program or HUB Subcontracting Plans (HSPs) to the GLO HUB Team contacts listed in Section 5.5 of this Solicitation.

3.2.2 Clarifications

The GLO/VLB will allow written requests for clarification of this Solicitation. Questions may be e-mailed or faxed to the point-of-contact listed in section 3.2.1 above. Questions shall be submitted in the following format. Submissions that deviate from this format may not be accepted:

- (a) Identifying Solicitation number
- (b) Section number
- (c) Paragraph number
- (d) Page number
- (e) Text of passage being questioned
- (f) Question

NOTE: The deadline for submitting questions is noted in Section 3.1 above. Please provide company name, address, phone number, e-mail address, and name of contact person when submitting questions.

3.2.3 Responses

All accepted questions will result in written responses with copies posted to the ESBD at: <http://www.txsmartbuy.com/sp>. Respondents' names shall be removed from questions in the responses released. It is Respondent's responsibility to check the ESBD or contact the point-of-contact in Section 3.2.1 for updated responses.

3.2.4 Prohibited Communications

On issuance of this Solicitation, except for the written inquiries described in Section 3.2.1 above, the GLO/VLB, its representative(s), or partners will not answer questions or otherwise discuss the contents of this Solicitation with any potential Respondent or their representative(s). Attempts to ask questions by phone or in person will not be allowed or recognized as valid. **Failure to observe this restriction may disqualify the Respondent.** Respondent shall rely only on written statements issued through or by the GLO/VLB's purchasing staff. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this Solicitation.

3.2.5 Pre-Proposal Conference

The GLO/VLB will conduct an optional pre-proposal conference on January 4, 2018 at 10:00 a.m. CT in Room 172 of the Stephen F. Austin Building, located at 1700 N. Congress Avenue, Austin, Texas 78701. Please notify the point-of-contact in Section 3.2.1 if you plan to attend. All Respondents are highly encouraged to attend; however, the conference is non-mandatory and Respondents shall not be penalized for failure to attend. The agenda and sign-in sheet for the conference shall be posted to the ESBD as part of an official Addendum to the Solicitation.

3.3. SOLICITATION RESPONSE COMPOSITION

3.3.1 General Requirements

Respondent shall complete and upload the documents listed below to the Dropbox™ URL in Section 3.4.3:

- (a) One Narrative Proposal, including all documents requested in Part 1 of Article VIII, the *Submission Checklist*, as one Portable Document Format (.pdf) file;
- (b) One Cost Proposal, submitted as a one .pdf file separate from the Narrative Proposal; and
- (c) One HUB Subcontracting Plan (HSP) with supporting documentation, as one .pdf file.

Respondent shall prepare a Solicitation Response that clearly and concisely represents its qualifications and capabilities under this Solicitation. Any terms and conditions attached to a Solicitation Response will not be considered unless specifically referred to in this Solicitation.

Failure to meet these conditions may result in disqualification of the Solicitation Response, and Respondent shall receive no further consideration.

3.3.2 Solicitation Response Format

For ease of evaluation, the Solicitation Response shall be presented in a format that corresponds to the order requested in Article VIII, *Submission Checklist*. The Narrative Proposal, Cost Proposal, and HUB Subcontracting Plan must be submitted as separate .pdf files. Responses to each section and subsection shall be labeled clearly to indicate the item being addressed. Exceptions to this will be considered during the evaluation process.

3.3.3 Page Limit and Supporting Documentation

Solicitation Responses should not exceed 25 pages in length. **Exhibit A**, Annual Report, résumés, Cost Proposal, and the HUB Subcontracting Plan are considered attachments and do not count towards the 25-page limit. The Solicitation Response should be formatted using 12-point or larger font, except for charts, graphs, or other graphical representations of data.

3.3.4 Technical Proposal

Respondent must describe clearly, specifically, and as completely as possible, its proposed methodology and schedule for achieving the objectives and requirements of this Solicitation. Respondent should identify all tasks to be performed to be responsive to Article II, *Scope of Work*, including project activities, materials, and other products, services, and reports to be generated during the contract period and relate them to the stated purposes and specifications described in this Solicitation. The Technical Proposal is a component of the Narrative Proposal referenced above.

3.4. SOLICITATION RESPONSE SUBMISSION AND DELIVERY

3.4.1 Deadline

Solicitation Responses must be received at the Dropbox™ URL in Section 3.4.3 no later than as specified in Section 3.1. Respondents may submit their Solicitation Responses any time prior to that deadline. Dropbox™ shall time stamp all uploaded Solicitation Responses; any other documentation of timely submission in lieu of the Dropbox™ time stamp WILL NOT be accepted.

3.4.2 Labeling

Each file uploaded to Dropbox™ shall include Respondent's company name and the title of the document; for example: "Company X: Narrative Proposal."

3.4.3 Delivery

Respondent must upload Solicitation Responses to the following Dropbox™ URL:

<https://www.dropbox.com/request/MXnS5o3iP9NAHk4UggSw>

Solicitation Responses submitted by any other means shall not be accepted. Please contact the point-of-contact listed in section 3.2.1 above for assistance with Dropbox™.

3.4.4 Alterations, Modifications, and Withdrawals

Solicitation Responses may be modified, altered, or withdrawn by notifying the point-of-contact listed in Section 3.2.1 above, provided such notice is received prior to the deadline for Solicitation Responses.

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ARTICLE IV. SOLICITATION RESPONSE EVALUATION & AWARD PROCESS

4.1. EVALUATION CRITERIA

4.1.1 Conformance with State Law

Solicitation Responses shall be evaluated in accordance with Chapters 2155-2156 of the Texas Government Code. The GLO/VLB shall not be obligated to accept the lowest priced proposal, but shall make an award to the Respondent that provides the “Best Value” to the state of Texas.

4.1.2 Minimum Qualifications

Respondents must meet the minimum qualifications listed below. Furthermore, Solicitation Responses that appear unrealistic in terms of technical commitment, that show a lack of technical competence, or that indicate a failure to comprehend the risk and complexity of a potential contract may be rejected.

Respondent shall submit a summary (not to exceed one page) that provides specific support for meeting the minimum qualifications outlined in this Section. This support can specifically state how the Respondent meets each minimum qualification or can direct the evaluators to the appropriate section of the Solicitation Response that provides support for the Respondent satisfying each minimum qualification.

4.1.2.1 Respondent must have been in business providing therapeutic rehabilitative services in compliance with VA and/or CMS Medicare guidelines for a minimum of five years, or the principals/owners must have had ownership/executive management experience in a previous company that provided therapeutic rehabilitative services in compliance with VA and/or CMS Medicare guidelines;

4.1.2.2 Respondent must have demonstrated experience in providing therapeutic rehabilitative services in compliance with VA and/or CMS Medicare guidelines;

4.1.2.3 Respondent shall be in good standing with all applicable regulatory agencies, including HHS/DADS, as demonstrated in the response to Section 5.4 of the Solicitation, *Litigation and Regulatory History*; and

4.1.2.4 Respondent must be financially solvent and adequately capitalized.

4.1.3 Selection Criteria

Solicitation Responses shall be consistently evaluated and scored in accordance with the following criteria:

- 4.1.3.1 Reasonableness of Respondent's Cost Proposal (35%);
- 4.1.3.2 Demonstrated competence in, and proposed methodology for, the provision of therapeutic rehabilitative services in compliance with VA and/or CMS Medicare guidelines, as applicable. The percentage of Medicare denials for therapy service and the number of times Respondent's services have been subject to a CMS targeted review shall also be considered during evaluation of this criterion (35%);
- 4.1.3.3 Demonstrated competence in, and proposed methodology for, accurate billing of services to CMS and client facilities (10%);
- 4.1.3.4 Demonstrated competence in, and proposed methodology for, utilizing PointClickCare®, or a compatible, cloud-based medical record system for accurate record keeping (5%);
- 4.1.3.5 Demonstrated ability to supply additional therapeutic equipment to meet the needs of the residents (5%);
- 4.1.3.6 Expertise and qualifications of key personnel (5%); and
- 4.1.3.7 Regulatory history pertaining to services provided at currently contracted facilities, as demonstrated in the response to Section 5.4 of the Solicitation, *Litigation and Regulatory History* (5%).
- 4.1.3.8 Non-Weighted Criterion: The GLO/VLB will review the Texas Comptroller of Public Accounts Vendor Performance Tracking System to verify vendor performance on other state contracts, if available. The evaluation committee may utilize this information to:
 - (a) Identify vendors that have exceptional performance.
 - (b) Aid purchasers in making a best value determination based on vendor past performance.
 - (c) Protect the state from vendors with unethical business practices.

NOTE: In order to clarify any response, the Solicitation evaluation committee may contact references provided in response to this Solicitation, contact Respondent's clients, or solicit information from any available source concerning any aspect of the Solicitation deemed pertinent to the evaluation process.

4.2. SHORT LIST

The GLO/VLB expects to make an initial evaluation of the Solicitation Responses to develop a short list of finalists. However, the GLO/VLB is not obligated to develop this

list. If a list is developed, all Respondents will be notified in writing whether or not they are finalists. A separate evaluation shall be performed for the short list.

4.3. ORAL PRESENTATION

The GLO/VLB may require an oral presentation from any or all Respondents. Respondents will be provided with advance notice of any such oral presentation and are responsible for their own presentation equipment. Failure to participate in the requested presentation may eliminate a Respondent from further consideration. The GLO/VLB is not responsible for any costs incurred by the Respondent in preparation for the oral presentation.

4.4. BEST AND FINAL OFFER (BAFO)

Clarification discussions, at the GLO/VLB's sole option, may be conducted with Respondents who submit Solicitation Responses determined to be acceptable and competitive. Respondents shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of the Solicitation Responses. Such revisions may be permitted after submissions and prior to award solely for the purpose of obtaining BAFOs. In conducting discussions, there shall be no disclosure by the GLO/VLB of any information derived from the Solicitation Responses submitted by competing Respondents.

4.5. CONTRACT AWARD

It is the intent of the GLO/VLB to award one contract under this Solicitation. An award notice will be sent to the selected Respondent. Any award is contingent upon the successful negotiation of final contract terms and upon approval of the Chief Clerk of the GLO. Negotiations shall be confidential and not subject to disclosure to competing Respondents unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the GLO/VLB, upon written notice to the Respondent, may negotiate a contract with the next highest scoring Respondent or may withdraw this Solicitation.

NOTE: Solicitation Responses are subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code, and will be withheld from or released to the public only in accordance therewith.

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ARTICLE V. REQUIRED RESPONDENT INFORMATION

5.1. RESPONDENT INFORMATION

Respondent must provide satisfactory evidence of its ability to manage and coordinate the types of activities described in this Solicitation and to produce the specified products or services on time. Respondent must provide the following information:

5.1.1 Company Narrative

Provide a detailed narrative explaining why Respondent is qualified to provide the services enumerated in Article II, focusing on its company's key strengths and competitive advantages.

5.1.2 Company Profile

Provide a company profile to include:

- (a) The company ownership structure (corporation, partnership, LLC, or sole proprietorship), including any wholly-owned subsidiaries, affiliated companies, or joint ventures. *(Please provide this information in a narrative and as a graphical representation.)* If Respondent is an Affiliate of, or has a joint venture or strategic alliance with, another company, please identify the percentage of ownership and the percentage of the parent's ownership. Finally, please provide your proposed operating structure for the services requested under this Solicitation and which entities (i.e. parent company, Affiliate, Joint Venture, subcontractor) will be performing them;
- (b) The year the company was founded and/or legally organized. If organized as a business entity other than a sole proprietorship (e.g., corporation, LLC, LLP, etc.), please indicate the type of entity, the state under whose laws the company is organized and the date of organization;
- (c) The location of your company headquarters and any field office(s) that may provide services for any resulting contract under this Solicitation, including subcontractors;
- (d) The number of employees in your company, both locally and nationally, and the location(s) from which employees may be assigned;
- (e) The name, title, mailing address, e-mail address, telephone number, and fax number of Respondent's point of contact for any resulting contract under this Solicitation; and

- (f) Indicate whether your company has ever been engaged under a contract by any Texas state agency. If “Yes,” specify when, for what duties, and for which agency.

NOTE: A Respondent that is not organized under the laws of the State of Texas must register with the Texas Secretary of State before it may transact business in Texas. Respondent must provide proof of this registration before the GLO may award it a contract under this Solicitation.

5.1.3 Key Staffing Profile

Respondent must provide résumés for key staff responsible for the performance of any contract resulting from this Solicitation. Please provide the name, educational background, work history, and DADS or other license number (if applicable) of Respondent’s staff who will be located at the El Paso Veterans Home and have any significant role in the provision of the services.

5.1.4 VA and CMS History

Respondent shall provide the percentage of Medicare denials for rehabilitative therapeutic services for all client facilities during the most recent five-year period. Respondent shall also list each instance that Respondent’s services have been subject to a VA or CMS targeted review over Respondent’s entire operational history, including the month and date of each VA or CMS review.

5.2. REFERENCES

Respondent shall provide a minimum of three non-GLO/VLB references for projects of similar type and size performed within the last three years, preferably for state and/or local government entities. The GLO/VLB reserves the right to check references prior to award. Any negative responses received may be grounds for disqualification of the proposal.

Respondent must verify current contacts. Information provided shall include:

- (a) Client name;
- (b) Project description;
- (c) Total dollar amount of project;
- (d) Key staff assigned to the referenced project that will be designated for work under this Solicitation; and
- (e) Client project manager name, telephone number, fax number, and e-mail address.

The GLO/VLB checks references by e-mail. Respondents who do not provide accurate e-mail addresses waive the right to have those references considered in the evaluation of their Solicitation Responses.

5.3. MAJOR SUBCONTRACTOR INFORMATION

In addition to the requirements of Article II, the Respondent must identify any major subcontractors whom Respondent intends to utilize in performing fifteen percent or more of the contract. The selected Respondent must indicate whether or not Respondent holds any financial interest in any major subcontractor. It may be required as a condition of award that an authorized officer or agent of each proposed major subcontractor sign a statement to the effect that the subcontractor has read, and will agree to abide by, Respondent's obligations under any contract awarded pursuant to this Solicitation. Any major subcontractor Respondent intends to utilize in performance of the work must also be included in the Respondent's HUB Subcontracting Plan.

5.4. LITIGATION AND REGULATORY HISTORY

Respondent must include in its Solicitation Response a complete disclosure of any alleged or significant contractual failures. In addition, Respondent must disclose any civil or criminal litigation or investigation pending over the last three years that involves Respondent or in which Respondent has been judged guilty or liable. For each instance of litigation or investigation, Respondent shall list: case information (e.g., cause number, location of court, names of parties); a description of each claim alleged against Respondent or its parent, subsidiary, or other affiliate; and a description of the disposition of the case.

In addition to the disclosures requested above, Respondent **must** address the following:

- (a) Has your organization or any key staff member ever had a license suspended, revoked, or terminated for any amount of time? If your answer is yes, please indicate the name of the facility and explain the circumstances in detail.
- (b) Has your organization or any key staff member ever had a Medicaid and/or Medicare provider agreement terminated? If your answer is yes, please indicate the name of the facility and explain the circumstances in detail.
- (c) Has your organization ever been placed under the management of a trustee, either voluntarily or involuntarily? If your answer is yes, please indicate the name of the facility and explain the circumstances in detail.
- (d) Has your organization or any key staff member ever been required to pay civil penalties or civil monetary penalties for failure to meet minimum nursing facility standards? If your answer is yes, please indicate the name of the facility, the total amount(s) of the penalties and explain the circumstances in detail.
- (e) Has your organization or any key staff member ever been the subject of a lawsuit based on that facility's alleged failure to provide appropriate and/or adequate care to a resident? If your answer is yes, please indicate the name of the facility and explain the circumstances in detail.

- (f) Has your organization or any key staff member ever been the subject of an investigation by any private, federal, or state health insurance program? If your answer is yes, please indicate the name of the facility and explain the circumstances in detail.

Failure to comply with the terms of this provision may disqualify any Respondent. Solicitation Responses may be rejected based upon Respondent's prior history with the state of Texas or with any other party that demonstrates, without limitation, unsatisfactory performance, adversarial or contentious demeanor, or significant failure(s) to meet contractual obligations.

5.5. HISTORICALLY UNDERUTILIZED BUSINESS (HUB)

In accordance with Texas Government Code §2161.252, a Solicitation Response that does not contain a HUB Subcontracting Plan (HSP) is non-responsive and will be rejected without further evaluation. In addition, if the GLO/VLB determines that the HSP was not developed in good faith, it will reject the Solicitation Response for failing to comply with the material specifications of this Solicitation. The GLO/VLB has provided a list from the state's Centralized Master Bidders List (CMBL) of potential HUB subcontractors, which may be able to assist a Respondent in fulfilling its good faith efforts as required by law. In addition to the list provided by the GLO/VLB, Respondents may access the CMBL for additional HUB firms that may be able to provide services to the Respondent. The CMBL may be accessed through the following website:

<https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp>

Any questions regarding the proper completion of the HSP may be made to the GLO HUB Team as the only exception to the single point of contact for this Solicitation.

Mindy Sue Cohen
Mindy.Cohen@GLO.Texas.Gov
512.936.1487

Daphne Grantham
Daphne.Grantham@GLO.Texas.Gov
512.463.5194

5.6. CONFLICTS

Respondent must disclose any potential conflict of interest it may have in providing the services described in this Solicitation, including all existing or prior arrangements. Please include any activities of affiliated or parent organizations and individuals who may be assigned to manage this account.

5.7. ANNUAL REPORT

Respondent shall submit an annual report, which must include:

- (a) Last two years of audited financial statements, including an income statement, cash flow statement, and balance sheet;
- (b) If applicable, last two years of consolidated statements for any holding companies or affiliates;
- (c) An audited or un-audited financial statement of the most recent quarter of operation; and
- (d) A full disclosure of any events, liabilities, or contingent liabilities that could affect Respondent's financial ability to perform this contract.

If Respondent is a privately or singularly owned business for which audited financial statements are not required, Respondent may provide the following annual report:

- (a) Last two years of un-audited financial statements, including an income statement, cash flow statement, and balance sheet;
- (b) An audited or un-audited financial statement of the most recent quarter of operation; and
- (c) A full disclosure of any events, liabilities, or contingent liabilities that could affect Respondent's financial ability to perform this contract.

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ARTICLE VI. COST PROPOSAL

6.1. COST PROPOSAL – GENERAL INFORMATION

6.1.1 Cost Proposal Structure

Respondent shall structure its cost proposal as a unit price equal to the rates set by Medicare for both Part A and Part B, with the same pricing used for Private Pay and SCD residents. Respondent shall submit unit pricing for each skill level of rehabilitative therapeutic services, as proposed by Respondent and defined by Medicare, for the anticipated census for each skill level.

6.1.2 Billing and Payment of Billable Medicare Part B Services

The GLO/VLB shall pay to the contracted Provider for such Medicare Part B Therapy Services a per unit fee equal to the Medicare allowable amount, as published in the Medicare fee schedule for the year in which the service is furnished, for each such Medicare Part B covered service furnished by Provider. For Medicare Part B Services, the GLO/VLB shall promptly pay the eighty-percent (80%) portion billed to Medicare after receiving such funds from Medicare. The Provider shall bill the remaining twenty-percent (20%) coinsurance amount to the appropriate payer on behalf of the GLO/VLB, and the GLO/VLB shall pay the Provider said coinsurance amount within ten (10) days of the earlier to occur of (i) the GLO/VLB's receipt of such funds from the payer, or (ii) the Provider's transfer of such coinsurance receivable to the GLO/VLB upon exhaustion of the Provider's standard collection procedures.

6.2. PROFILE INFORMATION

The profile information below is provided to assist with cost proposal development.

6.2.1 Occupancy Rate

The GLO/VLB's eight Texas State Veterans Homes have maintained an average daily census or occupancy level of 94 percent for the past 12 months.

6.2.2 Resident Mix

The El Paso Veterans Home currently has a mix of the following types of residents:

- Veteran/Non-Veteran Private Pay – 41.44%
- Veteran/Non-Veteran Medicaid – 15.96%
- Veteran/Non-Veteran Medicare – 2.39%
- Veteran Service Connected – 40.21%

ARTICLE VII. TERMS AND CONDITIONS

7.1. GENERAL CONDITIONS

7.1.1 Amendment

The GLO/VLB reserves the right to alter, amend, or modify any provision of this Solicitation, or to withdraw this Solicitation, at any time prior to contract award, if it is in the best interest of the GLO/VLB.

7.1.2 Informalities

The GLO/VLB reserves the right to waive minor informalities and irregularities in any Solicitation Response received.

7.1.3 Rejection

The GLO/VLB reserves the right to reject any or all Solicitation Responses received prior to contract award.

7.1.4 Irregularities

Any irregularities or lack of clarity in this Solicitation should be brought to the attention of the point-of-contact listed in Section 3.2.1 as soon as possible, so that corrective addenda may be furnished to prospective Respondents.

7.1.5 Offer Period

Solicitation Responses shall be binding for a period of 120 days after they are opened. Respondents may extend the time for which their Solicitation Response will be honored. Upon contract execution, prices agreed upon by the Respondent(s) are an irrevocable offer for the term of the contract and any contract extension(s). No other costs, rates, or fees shall be payable to the Respondent unless expressly agreed upon in writing by the GLO/VLB.

7.1.6 Open Records

The GLO/VLB is a government agency subject to the Texas Public Information Act (PIA), Chapter 552, Texas Government Code. The Solicitation Response and other information submitted to the GLO/VLB by the Respondent are subject to release as public information. The Solicitation Response and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for the Respondent to include proprietary or otherwise confidential information in its Solicitation Response or other submitted information, the Respondent must clearly label that proprietary or confidential information and identify the specific exception to

disclosure of that information in the PIA. Merely making a blanket claim that the entire Solicitation Response is protected from disclosure because it contains some proprietary information is not acceptable, and shall make the entire Solicitation Response subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Solicitation Response the Respondent considers proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA, except as provided by law.

Respondents are required to make any information created or exchanged with the state pursuant to this solicitation and any contract that may result from this solicitation, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.

Information related to the performance of this contract may be subject to the PIA and will be withheld from public disclosure or released only in accordance therewith. Respondent shall make any information created or exchanged with the state/GLO/VLB, and not otherwise excepted from disclosure under the PIA, available in a format that is accessible by the public at no additional charge to the state/GLO/VLB. Respondent shall make any information required under the PIA available to the GLO/VLB in Portable Document Format (PDF) or any other format agreed between the parties. The original copy of each Solicitation Response shall be retained in the official files of the agency as a public record.

Solicitation Responses and all other documents associated with this Solicitation will be withheld or released upon written request only in accordance with the PIA. To the extent that a Respondent wishes to prevent the disclosure of portions of its Solicitation Response to the public, Respondent shall demonstrate the applicability of any exception to disclosure provided under the PIA in accordance with the procedures prescribed by the PIA. Respondent may clearly label individual documents "confidential" or "trade secret" to demonstrate that it believes certain information is excepted from disclosure and may legally be withheld from the public. Respondent thereby agrees to indemnify and defend the GLO/VLB for honoring such a designation. The failure of Respondent to clearly label such documents shall constitute a complete waiver of any and all claims for damages caused by the GLO/VLB's release of these records.

Pursuant to Texas Government Code Chapter 2261, any contract that results from this Solicitation, including selected Respondent's Solicitation Response, shall be posted to the GLO's website.

7.1.7 Contract Responsibility

The selected Respondent shall be solely responsible for the performance of all contractual obligations that may result from an award based on this Solicitation. Respondent shall not be relieved of its obligations for any nonperformance by its subcontractors. GLO/VLB shall perform a quarterly evaluation of deliverables received against contract requirements.

7.1.8 Public Disclosure

Respondent will not advertise that it is doing business with the GLO/VLB or use a contract resulting from this Solicitation as a marketing or sales tool without prior written consent of the GLO/VLB. Furthermore, Respondent may not distribute or disclose this Solicitation to any other vendors or companies without permission from the GLO/VLB.

7.1.9 Substitutions

Substitutions prior to submission of the Solicitation Response are not permitted by GLO/VLB. Substitutions will be considered after contract award and must be approved in writing by GLO/VLB.

7.1.10 Remedies

All remedies available to the GLO/VLB for breach or anticipatory breach of any contract that results from this Solicitation are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. The GLO/VLB may pursue any legal or equitable remedy available to it.

7.2. **INSURANCE**

7.2.1 Required Coverages

Prior to the commencement of work under this Contract, Operator 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 GLO/VLB, copies of policy declaration pages and policy endorsements as evidence thereof:

7.2.1.1 Workers Compensation & Employers Liability

Operator must maintain Workers' Compensation insurance coverage in accordance with statutory limits.

Workers Compensation: Statutory Limits

Employers Liability: Each Accident \$1,000,000
Disease - Each Employee \$1,000,000
Disease - Policy Limit \$1,000,000

This website (coverage starts with 406 of the Labor code) addresses what Texas requires of Workers Compensation:

<http://www.tdi.texas.gov/wc/act/index.html>

- 7.2.1.2 Commercial General Liability/Professional Liability with a combined single limit of \$1,000,000 per occurrence including products/completed operations, where appropriate, with a separate aggregate of \$3,000,000 for bodily injury and for property damages.

The policy shall contain the following provisions:

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

(ii) Independent Operators/Contractors' coverage; and

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

- 7.2.1.3 Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$5,000,000 per accident for bodily injury and property damage. The policy shall contain the following endorsements in favor of GLO/VLB:

(i) Waiver of Subrogation endorsement; and

(ii) State of Texas, GLO/VLB, its officials, directors, employees, Representatives and volunteers must be listed as additional insureds.

- 7.2.1.4 Building and Contents: \$20,000,000. State of Texas, GLO/VLB, its officials, directors, employees, representatives and volunteers must be listed as additional insureds.

Insurance policies shall be written by a company licensed to do business in the State of Texas, with an A.M. Best rating of "A-" or better, and authorized to provide the corresponding coverage.

Work on any contract shall not begin until after Operator has submitted acceptable evidence of insurance. Failure to maintain insurance coverage or acceptable alternative methods of insurance shall be deemed a breach of contract.

7.2.2 Alternative Insurability

Notwithstanding the preceding, the GLO/VLB reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies customarily required. It will be Respondent's responsibility to recommend to the GLO/VLB alternative methods of insuring the contract. Any alternatives proposed by Respondent should be accompanied by a detailed explanation regarding Respondent's inability to obtain the required insurance. The GLO/VLB shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

7.3. PROTEST

Any Respondent unsuccessful or aggrieved in connection with this Solicitation may file a protest in accordance with Title 31, Section 3.50 of the Texas Administrative Code.

7.4. CONTRACT TERMS AND SOLICITATION ACCEPTANCE

7.4.1 Terms and Conditions

Exhibit B, *Sample Contract*, is the standard contract used by the GLO/VLB for Veterans Home rehabilitative therapy services; please review the terms and conditions therein. The GLO/VLB reserves the right to negotiate final contract terms with any selected Respondent. The terms and conditions in **Exhibit B** are subject to change prior to the execution of any contract that may result from this Solicitation.

7.4.2 Affirmations and Solicitation Acceptance

Execution of **Exhibit A** of this Solicitation shall constitute an agreement to all terms and conditions specified in this Solicitation, including, but not limited to, **Exhibit B** and all terms and conditions therein.

7.5. VENDOR PERFORMANCE REPORTING

The GLO/VLB is required by rule (34 TAC §20.509) to report vendor performance through the Vendor Performance Tracking System (VPTS). Additional information on this system can be found on the Texas Comptroller of Public Accounts website through this link:

<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>

As of January 24, 2017, the VPTS reporting methodology was revised so that vendors are assigned a letter grade (A-F) rather than the historic satisfactory/unsatisfactory ratings. The report grades for historic reports will be displayed as "Legacy Satisfactory" or "Legacy

Unsatisfactory.” New reports will be graded on the A-F scale as now required by statute. A Respondent’s past performance shall be measured in the VPTS by a letter grade that combines any historic ratings with ratings using the new letter grade system in the method described in [34 TAC §20.115](#).

The GLO/VLB is authorized to consider past performance when determining contract award as part of the “Best Value” standard, in compliance with applicable provisions of Texas Government Code §§2155.074, 2155.075 and 2156.125. The GLO/VLB may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the VPTS, the GLO/VLB may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of the GLO/VLB, and any negative findings, as determined by the GLO/VLB, may result in non-award to the Respondent.

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ARTICLE VIII. SUBMISSION CHECKLIST

This checklist is provided for Respondent’s convenience only and identifies documents that must be submitted with this Solicitation in order to be considered responsive. Any Solicitation Responses received without these requisite documents may be deemed nonresponsive and may not be considered for contract award.

A COMPLETE SOLICITATION PACKAGE SHALL INCLUDE:

1. Part 1 – Narrative Proposal (one .pdf file)
2. Part 2 – Cost Proposal (one .pdf file)
3. Part 3 – HUB Subcontracting Plan (one .pdf file)

Please present documents in the following order:

PART 1 – NARRATIVE PROPOSAL

- | | | |
|--|-----------------|-----|
| 1. <u>Exhibit A</u> , Affirmations and Solicitation Acceptance | | ___ |
| 2. Summary of Minimum Qualifications | (Section 4.1.2) | ___ |
| 3. Technical Proposal | (Section 3.3.4) | ___ |
| 4. Company Narrative | (Section 5.1.1) | ___ |
| 5. Company Profile | (Section 5.1.2) | ___ |
| 6. Key Staffing Profile | (Section 5.1.3) | ___ |
| 7. VA and CMS History | (Section 5.1.4) | ___ |
| 8. References | (Section 5.2) | ___ |
| <i><u>Please include one extra copy of References and place, unbound, at the back of the original Solicitation Response.</u></i> | | |
| 9. Major Subcontractor Information (if applicable) | (Section 5.3) | ___ |
| <i>If not applicable, please indicate in the proposal.</i> | | |
| 10. Litigation and Regulatory History | (Section 5.4) | ___ |
| 11. Conflicts (if applicable) | (Section 5.6) | ___ |
| <i>If not applicable, please indicate in the proposal.</i> | | |
| 12. Annual Report | (Section 5.7) | ___ |

PART 2 – COST PROPOSAL

1. Cost Proposal (Section 6.1) _____

PART 3 – HUB SUBCONTRACTING PLAN

1. HUB Subcontracting Plan (Section 5.5) _____

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EXHIBIT A. AFFIRMATIONS AND SOLICITATION ACCEPTANCE

GENERAL AFFIRMATIONS AND SOLICITATION ACCEPTANCE

Execution of this **Exhibit A**, shall constitute an agreement to all terms and conditions specified in the Solicitation, including, without limitation, **Exhibit A** and all terms and conditions therein, except such terms and conditions that the Respondent expressly excludes. Failure to sign this **Exhibit A** or signing it with a false statement shall void the submitted Solicitation Response and/or any resulting contracts. Respondent agrees without exception to the following general affirmations and acknowledges that any contract resulting from this Solicitation may be terminated and payment withheld if any of the following affirmations or certifications are inaccurate:

1. All statements and information prepared and submitted in the response to this Solicitation are current, complete, and accurate.
2. The Respondent has not given, offered to give, nor intends to give at anytime hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Solicitation Response.
3. Section 2155.004 of the Texas Government Code prohibits the GLO from awarding a contract that includes proposed financial participation by a person who received compensation from the GLO to participate in preparing the specifications or request for proposals on which the contract is based. Under Section 2155.004, Government Code, the vendor [Respondent] certifies that the individual or business entity named in this bid or contract [Solicitation Response] is not ineligible to receive any contract resulting from this Solicitation.
4. Under the Texas Family Code, Section 231.006, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services. Under Section 231.006, Texas Family Code, the vendor or applicant [Respondent] certifies that the individual or business entity named in this contract, bid, or application [Solicitation Response] is not ineligible to receive the specified grant, loan, or payment. The Solicitation Response must include the name and social security number of any individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. This information must be provided prior to execution of any offer.
5. The GLO is federally mandated to adhere to the directions provided in the President’s Executive Order (EO) 13224, blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism and any subsequent changes made to it. The GLO will cross-reference Respondents/vendors with the federal System for Award Management (<https://www.sam.gov/>), which includes the United States Treasury’s Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Respondent certifies: 1) that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity; 2) that Respondent is in compliance with the State of Texas statutes and rules relating to procurement; and 3) that Respondent is not listed on the federal government’s terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/>. This provision shall be included in its entirety in Respondents’ subcontracts.
6. Respondent agrees that any payments due under any contract resulting from this Solicitation will be applied towards any debt, including, but not limited to, delinquent taxes and child support Respondent owes to the State of Texas.
7. Respondent certifies it is in compliance with Texas Government Code Section 669.003, relating to contracting with the executive head of a state agency. If this Section applies, Respondent will complete the following information in order for the bid to be evaluated:

Name of Former Executive: _____
Name of State Agency: _____
Date of Separation from State Agency: _____
Position with Respondent: _____
Date of Employment with Respondent: _____

8. If any contract resulting from this Solicitation is for services, Respondent, in performing the contract, shall purchase products and materials produced in the State of Texas when they are available at a price and time comparable to

products and materials produced outside this state.

9. Respondent shall maintain all documents and other related records relating to the State's property and any contract resulting from this Solicitation for a period of seven (7) years after the date of the submission of final invoices or until a resolution of billing questions, whichever is later. Respondent acknowledges that the State has a right of access to information in Respondent's possession relating to State property and agrees to make such information reasonably available upon request of the State.
10. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under a contract or indirectly through a subcontract under the contract. Acceptance of funds directly under any contract resulting from this Solicitation or indirectly through a subcontract under such contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. 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. Respondent shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Respondent and the requirement to cooperate is included in any subcontract it awards.
11. Respondent certifies that if it employs any former employee of the GLO, such employee will perform no work in connection with any contract resulting from this Solicitation during the twelve (12) month period immediately following the employee's last date of employment at the GLO.
12. The Respondent shall not discriminate against any employee or applicant for employment because of race, disability, color, religion, sex, age, or national origin. The Respondent shall take affirmative action to ensure that applicants are employed and that employees are treated without regard to their race, disability, color, sex, religion, age, or national origin. Such action shall include, but is not be limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Respondent agrees to post notices, which set forth the provisions of this non-discrimination article, in conspicuous places available to employees or applicants for employment. The Respondent shall include the above provisions in all subcontracts pertaining to the work.
13. Respondent certifies that neither Respondent nor any firm, corporation, partnership, or institution represented by Respondent or anyone acting for such firm, corporation, partnership, or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or federal antitrust laws; or (2) communicated the contents of the Solicitation Response either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for the Solicitation.
14. By signing this Solicitation Response, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a "Texas Bidder" as defined in Section 2155.444(c) of the Texas Government Code.
15. Respondent understands that the GLO does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Respondents are expected to report any possible fraudulent or dishonest acts, waste, or abuse to the agency's Internal Audit Director at 512.463.6078 or tracey.hall@glo.texas.gov.
16. Respondent certifies that it will comply with the federal Immigration Reform and Control Act of 1986, the Immigration Act of 1990, and the Immigration Act of 1996 regarding employment, employment verification, and retention of verification forms of individuals who will prospectively perform work described in this proposal.
17. Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) 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 Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) 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 Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Solicitation

Response is not ineligible to receive the specified contract.

18. Respondent represents and warrants that it shall comply with the applicable provisions of and rules and regulations related to the Drug-Free Work Place Act of 1988 (41 U.S.C. §§ 8101-8106).
19. The Respondent represents that payment to the Respondent and the Respondent's receipt of appropriated or other funds under any contract resulting from this Solicitation are not prohibited by Section 556.005 or Section 556.008 of the Texas Government Code.
20. If the Solicitation is for completion of a "project" (as defined by Texas Government Code §2252.201) in which iron or steel products will be used, Respondent agrees any iron or steel product produced through a "manufacturing process" (as defined by Texas Government Code §2252.201) and used in the project shall be produced in the United States.
21. In accordance with Texas Government Code chapter 2270, by signing the Solicitation Response, Respondent verifies that it does not boycott Israel and will not boycott Israel during the term of any contract resulting from the Solicitation.

Check below if preference claimed under Title 34 TAC § 20.306.

- Supplies, materials, equipment, or services produced in Texas/offered by Texas bidders or Texas bidder that is owned by a service-disabled veteran
- Agricultural products produced/grown in Texas
- Agricultural products and services offered by Texas bidders
- Texas vegetation native to the region for landscaping purposes
- USA produced supplies, materials, or equipment
- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials, including recycled steel
- Covered television equipment
- Energy efficient products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products and services from economically depressed or blighted areas
- Products produced at facilities located on formerly contaminated property
- Vendors that meet or exceed air quality standards
- Paper containing recycled fibers
- Recycled Computer Equipment of other manufacturers
- Foods of Higher Nutritional Value
- Travel agents residing in Texas

NOTE: Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act").

I have read, understand, and agree to comply with the terms and conditions specified in this Solicitation Response. Checking "YES" indicates acceptance, while checking "NO" denotes non-acceptance.

YES _____ NO _____

SIGNATURE PAGE FOLLOWS

RESPECTFULLY SUBMITTED:

Authorized Signature of the person authorized to bind your company to any contract that may result from this Solicitation:

Date:

Printed Name and Title of Signatory:

Telephone:

Email:

Address:

City/State/Zip:

Full Legal Name of Respondent's company as registered with the Texas Secretary of State, and as it should appear on any Contract resulting from this Solicitation:

Respondent's Tax I.D. Number as registered with the Texas Comptroller of Public Accounts, and as it should appear on any Contract resulting from this Solicitation:

If Respondent is a Corporation or other legal entity, attach a corporate resolution or other appropriate official documentation, which states that the person signing this Solicitation Response is an authorized person that can legally bind the corporation or entity.

EXHIBIT B. SAMPLE CONTRACT



REHABILITATIVE THERAPY SERVICES CONTRACT GLO Contract No. 18-***-***-****

THE GENERAL LAND OFFICE (the “GLO”) and ***, Tax Identification Number *** (“Provider”), each a “Party” and collectively “the Parties,” enter into the following contract for therapy services (the “Contract”) pursuant to Chapter 2155-2157 of the Texas Government Code.

I. DEFINITIONS / INTERPRETIVE PROVISIONS / PROJECT DESCRIPTION

1.01 DEFINITIONS

“[Administrative and Audit Regulations](#)” means the statutes and regulations included in: Title 2, Part 200, Code of Federal Regulations Chapter 321 of the Government Code; Subchapter F of Chapter 2155 of the Government Code; and the requirements of Article VII herein. With regard to any federal funding, agencies with the authority to audit and inspect include: the relevant federal agency, the Comptroller General, the General Accounting Office, and the Office of Inspector General. In addition, state agencies and/or designees with the authority to audit and inspect include the GLO, the GLO’s contracted examiners, the State Auditor’s Office, the Texas Attorney General’s Office, and the Texas Comptroller of Public Accounts.

“[Attachment](#)” means documents, terms, conditions, or additional information physically added to this Contract following the execution page or included by reference, as if physically, within the body of this Contract.

“[Contract](#)” means this entire document, along with any Attachments, both physical and incorporated by reference.

“[Deliverables](#)” means a unit or increment of work to include, any item, report, data, document, photograph, drawing, process, computer program or code, or other submission required to be delivered under the terms of this Contract, in whatever form.

“[Federal Assurances](#)” means Standard Form 424B (Rev. 7-97) (non-construction projects); or Standard Form 424D (Rev. 7-97) (construction projects), in **Attachment ****, attached hereto and incorporated herein for all purposes.

“Federal Certifications” means U.S. Department of Commerce Form CD-512 (12-04), “Certifications Regarding Lobbying – Lower Tier Covered Transactions,” also in Attachment **, attached hereto and incorporated herein for all purposes.

“Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“GAAP” means “generally accepted accounting principles.”

“GASB” means the Governmental Accounting Standards Board.

“General Affirmations” means the statements in Attachment **, attached hereto and incorporated herein for all purposes, which Provider affirms by executing this Contract.

“GLO” means the Texas General Land Office, its officers, employees, and designees.

“HSP” means HUB Subcontracting Plan, as outlined by Chapter 2161 of the Texas Government Code

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“Intellectual Property” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and worldwide registration of such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, and other intangible proprietary information, and all federal, state, or international registrations or applications for any of the foregoing.

“Mentor Protégé” means the Comptroller of Public Accounts’ leadership program found at: <http://www.window.state.tx.us/procurement/prog/hub/mentorprotege/>.

“Project” means the Rehabilitative Therapy Services, described in **SECTION 1.03** of this Contract.

“Prompt Pay Act” means Chapter 2251 of the Texas Government Code.

“Provider” means (insert vendor name here) selected to accomplish the Project under this Contract.

“Public Information Act” means Chapter 552 of the Texas Government Code.

“Solicitation” means the GLO’s RFP No. X0013891-AW, incorporated herein by reference for all purposes in its entirety, including any Attachments.

“Solicitation Response” means Provider’s full and complete response to the Solicitation, which response is attached hereto and incorporated herein for all purposes in its entirety, including any Attachments and addenda, as Attachment **.

“State of Texas *TexTravel*” means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“Subcontractor” means an individual or business that signs a contract, or enters into an agreement with Provider, to perform part or all of the obligations of Provider under this Contract.

“Work” means all services to be performed, goods to be delivered, and any appurtenant actions performed and items produced, conceived, or developed, including but not limited to Deliverables, in the performance of the Project.

1.02 INTERPRETIVE PROVISIONS

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;
- (b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified;
- (c) The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation;
- (d) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract;
- (e) All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract;
- (f) This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations,

and policies are cumulative and each shall be performed in accordance with its terms;

- (g) Unless otherwise expressly provided, reference to any action of the GLO or by the GLO by way of consent, approval, or waiver shall be deemed modified by the phrase “in its/their sole discretion.” Notwithstanding the preceding sentence, any approval, consent, or waiver required by, or requested of, the GLO shall not be unreasonably withheld or delayed;
- (h) Time is of the essence in this Contract.
- (i) In the event of conflicts or inconsistencies between this contract and its attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Signed Contract; Attachments to the Contract: Attachment X, Attachment Y, Attachment Z; Solicitation Documents; and Provider’s Response to Solicitation.

1.03 PROJECT

Provider shall provide therapeutic rehabilitative services, including physical therapy, occupational therapy, and speech language pathology, in accordance with guidelines provided by the Department of Veterans Affairs (VA) and the Centers for Medicare & Medicaid Services (CMS) for Medicare Part A and Part B requirements. In the Solicitation Response, Respondent shall describe in detail its experience with, and proposed methodology for, the performance of the following services:

- a) Provision of physical therapy services in accordance with VA and Medicare Part A and Part B requirements;
- b) Provision of occupational therapy services in accordance with VA and Medicare Part A and Part B requirements;
- c) Provision of speech language pathology services in accordance with VA and Medicare Part A and Part B requirements;
- d) Utilization of PointClickCare®, or compatible, cloud-based medical record system that meets HIPAA requirements;
- e) Accurate billing of services to CMS;
- f) Accurate billing of services to the client facility; and
- g) Supply of additional therapeutic equipment to meet the needs of Residents.

Provider shall perform the therapeutic rehabilitative services in compliance with all applicable laws, rules, regulations, standards, and policies of federal, state, and local governments and any other entity that may have jurisdiction. The El Paso Veterans Home is operated by a GLO/VLB-contracted Operator; the Operator is responsible for supervising the performance of all administrative functions necessary to manage and operate the El Paso Veterans Home including comprehensive medical, nursing, administrative, and social programs. However, the therapeutic rehabilitative services Provider selected pursuant to this Solicitation shall report directly to the GLO/VLB. The GLO/VLB employs an On-Site Representative (OSR) at the El Paso Veterans Home; the OSR oversees the operations of the Veterans Home on the VLB's behalf. (the "Project"). The Project shall be performed in accordance with this Contract and all Attachments, RFP No. X0013891-AW, and Provider's Proposal dated *****, attached hereto and incorporated herein in its entirety for all purposes as **Attachment ****.

1.04 REPORTING REQUIREMENTS

Pursuant to Article *** of the Solicitation, monthly, quarterly, annual, and final reports in portable document format (pdf.) should be submitted to ***@glo.state.tx.us; and one (1) hard copy of each should be sent to the attention of *** / GLO *** Division / PO BOX 12873 / Austin, TX / 78711-2873. Quarterly and annual reports are due within two (2) weeks of the end of each quarter; the final report is due within sixty (60) days of expiration or termination of the Contract or completion of the Project.

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II. TERM

2.01 DURATION

This Contract shall be effective as of the date executed by the last Party and shall terminate on ***. The GLO, at its own discretion, may extend this Contract subject to terms and conditions mutually agreeable to both Parties.

Notwithstanding the effective date of this Contract, no charges may be incurred and no work may begin prior to the date on the GLO Project Manager's written Notice to Proceed ("NTP"). The NTP may be delivered by electronic mail or facsimile transmission, with a copy to the GLO Legal Services Division.

2.02 EARLY TERMINATION

The GLO may terminate this Contract by giving written notice specifying a termination date at least thirty (30) days subsequent to the date of the notice. Upon receipt of any such notice, Provider shall cease Work, undertake to terminate any relevant subcontracts, and incur no further expense related to this Contract. Such early termination shall be subject to the equitable settlement of the respective interests of the Parties, accrued up to the date of termination.

2.03 ABANDONMENT OR DEFAULT

If the provider abandons work or defaults on the contract, the GLO reserves the right to cancel the contract without notice and either re-solicit or re-award the contract to the next best responsive and responsible respondent. The defaulting provider will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the agency based on the seriousness of the default.

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III. CONSIDERATION

3.01 CONTRACT LIMIT, FEES, AND EXPENSES

Provider will be compensated in accordance with Attachment ***, Fee Schedule for Time and Materials, in an amount not to exceed *** DOLLARS (\$***.**).

Travel included in the Scope of Services must adhere to the rates established by the Comptroller of the State of Texas, as outlined in the State of Texas travel guidelines, *TexTravel*.

Subject to the maximum Contract amount authorized herein, upon specific, prior, written approval by the GLO, lodging, travel, and other incidental direct¹ expenses may be reimbursed under this Contract for professional or technical personnel who are (a) away from the cities in which they are permanently assigned; (b) conducting business specifically authorized by the GLO; and (c) performing services not originally contemplated in the Scope of Services.

The limit for such reimbursements shall be the rates established by the Comptroller of the State of Texas, as outlined in the State of Texas travel guidelines, *TexTravel*. If a rate within the limits set forth in *TexTravel* is not available, Provider shall use its best efforts to obtain the lowest available room rate. Provider shall obtain prior approval from the Project Manager using the GLO Travel Office approved form.

Requests for payment must:

- (a) be submitted to vendorinvoices@glo.texas.gov;
- (b) be supported by documentation that, in the judgment of the GLO, allows for full substantiation of the costs incurred; and
- (c) **prominently display "GLO Contract No. XX"**

The Prompt Pay Act generally applies to payments to Provider. HOWEVER, THE PROMPT PAY ACT DOES NOT APPLY IF PROVIDER DOES NOT SEND INVOICES TO VENDORINVOICES@GLO.TEXAS.GOV. If Provider does not submit invoices in strict accordance with the instructions in this section, payment of invoices may be significantly delayed. Provider agrees that the GLO shall not pay interest, fees, or other penalties for late payments resulting from Provider's failure to submit invoices in strict accordance with the instructions in this section.

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¹ Certain other incidental direct expenses, including, but not limited to, copying, telephone, data, and express mail services may be reimbursed upon specific, written approval by the GLO, at rates determined by the GLO.

IV. PROVIDER'S WARRANTY, AFFIRMATIONS, AND ASSURANCES

4.01 PERFORMANCE WARRANTY

Provider warrants that all Work performed under this Contract will be performed in a manner consistent with a degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Provider warrants that all Deliverables under this Contract shall be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated Attachments (if any); and shall be fit for ordinary use, of good quality, and with no material defects. If Provider fails to complete Deliverables timely or to perform satisfactorily under conditions required by this Contract, the GLO may require Provider, at its sole expense, to (a) repair or replace all defective or damaged Deliverables; (b) refund any payment received for all defective or damaged Deliverables and, in conjunction therewith, require Provider to accept the return of such Deliverables; and/or (c) take necessary action to ensure that future performance and Deliverables conform to the Contract requirements.

4.02 GENERAL AFFIRMATIONS

To the extent they apply, Provider certifies it has reviewed the General Affirmations in **Attachment **** , and that Provider is in compliance with all the requirements contained therein.

4.03 FEDERAL ASSURANCES AND CERTIFICATIONS

To the extent they apply, Provider certifies it has reviewed the Federal Assurances and Certifications in **Attachment **** and that Provider is in compliance with all the requirements contained therein. **Provider certifies it is in compliance with all other applicable federal laws, rules, or regulations, pertaining to this Contract.**

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V. STATE AND FEDERAL FUNDING

5.01 STATE FUNDING

- (a) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO in violation of Article III, Section 49, of the Texas Constitution. In compliance with Article VIII, Section 6 of the Texas Constitution, it is understood that all obligations of the GLO 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 claim by Provider for damages under this Contract may not exceed the amount of funds appropriated for payment, but not yet paid to Provider, under the annual budget in effect at the time of the breach. Nothing in this provision shall be construed as a waiver of sovereign immunity.

5.02 RECAPTURE OF FUNDS

Provider shall conduct, in a satisfactory manner as determined by the GLO, the Project as set forth in the Contract and all Attachments, whether incorporated physically or by reference. The discretionary right of the GLO to terminate for convenience under **SECTION 2.02** notwithstanding, Provider expressly understands and agrees that the GLO shall have the right to terminate the Contract and to recapture and be reimbursed for any payments (i) made by the GLO that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures.

5.03 OVERPAYMENT

Provider understands and agrees that it shall be liable to the GLO for any costs disallowed pursuant to financial and compliance audit(s) of funds Provider received under this Contract. Provider understands and agrees that it shall reimburse such disallowed costs from funds which were not provided or otherwise made available to Provider under this Contract.

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VI. OWNERSHIP, INTELLECTUAL PROPERTY, AND THIRD-PARTY RELIANCE

6.01 OWNERSHIP AND INTELLECTUAL PROPERTY

(a) The GLO shall own, and Provider hereby irrevocably assigns to the GLO, all ownership right, title, and interest in and to all Intellectual Property acquired or developed by Provider pursuant to this Contract, including without limitation all Intellectual Property in and to reports, drafts of reports, data, drawings, computer programs and codes, and/or any other information or materials acquired or developed by Provider under this Contract. The GLO shall have the right to obtain and to hold in its name any and all patents, copyrights, trademarks, service marks, registrations, or such other protection as may be appropriate to the subject matter, including extensions and renewals thereof.

(b) Provider must give the GLO and the State of Texas, as well as any person designated by the GLO or the State of Texas, all assistance and execute such documents, as required to perfect the rights granted to the GLO herein without any charge or expense beyond the stated amount payable to Provider for the services authorized under this Contract.

6.02 COPYRIGHT

(a) Provider agrees and acknowledges that all expressive content subject to copyright protection, including without limitation all reports, drafts of reports, drawings, artwork, photographs, video, computer programs and codes, and/or any other expressive content acquired or developed by Provider pursuant to this Contract (individual, a “Work,” and collectively the “Works”), will be made the exclusive property of the GLO. Provider acknowledges that each Work is a “work made for hire” under the United States Copyright Act of 1976. All rights in and to each Work, including the copyright to the Work shall be and remain the sole and exclusive property of the GLO.

(b) If, for any reason, any Work or any portion of a Work is not a Work made for hire, Provider hereby irrevocably assigns to the GLO ownership of all right, title and interest in and to the Works or such portion of any Work, including without limitation the entire and exclusive copyright in the Works and all rights associated with the copyright, including but not limited to reproduction rights, distribution rights, the right to prepare translations and other derivative works, and the right to display the Works in all formats and media now known or developed in the future.

(c) Provider must give the GLO and the State of Texas, as well as any person designated by the GLO or the State of Texas, all assistance required to perfect the rights granted to the GLO defined herein without any charge or expense beyond the stated amount payable to Provider for the services authorized under this contract.

6.04 THIRD-PARTY RELIANCE

To the extent allowed by law, the GLO shall not use, willingly allow, or cause Work to be used for any purpose other than performance of Provider's obligations under this Contract without advising any receiving party that it relies upon or uses the Work entirely at its own risk and without liability to Provider.

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VII. RECORDS, AUDIT, RETENTION, AND DISCLOSURE

7.01 BOOKS AND RECORDS

Provider shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the GLO, the State of Texas Auditor's Office, the United States Government, and/or their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.

7.02 INSPECTION AND AUDIT

All records related to this Contract, including records of Provider and its Subcontractors, shall be subject to the Administrative and Audit Regulations. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. 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. **The Comptroller General, the General Accounting Office, the Office of Inspector General, or any authorized representative of the U.S. Government shall also have this right of inspection.** Provider shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Provider and the requirement to cooperate is included in any subcontract it awards.

7.03 PERIOD OF RETENTION

The parties shall maintain all records relevant to this Contract for a minimum of seven (7) years, or as required by federal regulations applicable to the Project, if such regulations specify a retention period longer than seven (7) years. The period of retention begins at the date of payment by the GLO for the goods or services or from the date of termination of the Contract, whichever is later. The period of retention shall be extended for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation that may ensue.

7.04 CONFIDENTIALITY

To the extent permitted by law, Provider and the GLO shall keep all information confidential, in whatever form produced, prepared, observed, or received by Provider or the GLO to the extent that such information is: (a) confidential by law; (b) marked or designated "confidential" (or words to that effect) by Provider or the GLO; or (c) information that Provider or the GLO is otherwise required to

keep confidential by this Contract. Furthermore, Provider will not advertise that it is doing business with the GLO, use this Contract as a marketing or sales tool, or make any press releases concerning Work under this Contract without the prior written consent of the GLO.

7.05 PUBLIC RECORDS

Pursuant to Texas Gov't Code Chapter 2261, Provider agrees this Contract, including Provider's response to the solicitation and/or proposal(s) submitted prior to this contract award, shall be posted to the GLO's website. Additional information related to the performance of this Contract may be subject to the Public Information Act ("PIA") and will be withheld from public disclosure or released only in accordance therewith. Provider shall make any information created or exchanged with the state pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state/the GLO. Provider shall make any information required under the PIA available to the GLO in portable document file (".pdf") format or any other format agreed between the parties. Failure of Provider to mark as "confidential" or a "trade secret" any information that it believes to be excepted from disclosure waives any and all claims Provider may make against the GLO for releasing such information without prior notice to Provider. . . Provider shall notify GLO's General Counsel within twenty-four hours of receipt of any third party written requests for information, and forward a copy of said written requests to PIALegal@glo.texas.gov. If request was not written, Provider shall forward the third party's contact information to the above-designated e-mail address.

7.06 INFORMATION COMPILED UNDER CONSULTING SERVICES CONTRACT

Upon completion of the Contract, Provider shall give the GLO copies, in digital form on a CD, DVD, USB device, or other digital medium specified by the Parties, of all documents, films, recordings, or reports compiled by Provider under the Contract.

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VIII. MISCELLANEOUS PROVISIONS

8.01 INSURANCE

Provider shall acquire for the duration of this Contract insurance with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount and in the form required by **Attachment ****** of this Contract, **REQUIRED INSURANCE AND FORM**. Furthermore, Provider shall submit a certificate of liability insurance as required under this Contract, including (if requested) a schedule of coverage (or “underwriter’s schedules”) establishing to the satisfaction of the GLO the nature and extent of coverage granted by each such policy. In the event that any policy is determined to be deficient to comply with the terms of this Contract, Provider shall secure such additional policies or coverage as the GLO may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Provider must produce renewal certificates for each type of coverage.

8.02 TAXES/WORKERS’ COMPENSATION/UNEMPLOYMENT INSURANCE

(a) Provider shall be solely liable and responsible for payment of Provider’s and Provider’s employees’ taxes of whatever kind, arising out of the execution or performance of the Contract. Provider shall comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers’ compensation. The GLO and the State of Texas shall not be liable to Provider or its officers, agents, employees, representatives, contractors, assignees, designees, or others for the payment of taxes, or the provision of unemployment insurance, workers’ compensation, or any benefit available to a state employee or employee of another governmental entity.

(b) Provider shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from tax liability, unemployment insurance, or workers’ compensation in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Provider and the GLO shall furnish timely written notice to each other of any such claim. Provider shall be liable to pay all costs of defense including attorneys' fees. Provider shall coordinate its defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and Provider may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.

8.03 LEGAL OBLIGATIONS

Provider 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 Provider to provide the goods or services required by this Contract. Provider will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Provider shall pay any such government obligations not paid by its subcontractors during performance of this Contract.

8.04 INDEMNITY – ACTS AND OMISSIONS

Provider shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from any acts or omissions of Provider or its officers, agents, employees, representatives, suppliers, contractors, subcontractors, assignees, designees, or suppliers of contractors or subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Provider and the GLO shall furnish timely written notice to each other of any such claim. Provider shall be liable to pay all costs of defense including attorneys' fees. Provider shall coordinate its defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and Provider may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.

8.05 INFRINGEMENT

(a) Provider shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from infringement of any United States patent, copyright, trade or service mark, or any other intellectual or intangible property right that occurs in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Provider and the GLO shall furnish timely written notice to each other of any such claim. Provider shall be liable to pay all costs of defense including attorneys' fees. Provider shall coordinate its defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and Provider may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.

(b) Provider shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Provider's written approval, (iii) any modifications made to the product by the Provider pursuant to Customer's specific instructions,

or (iv) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

(c) If Provider becomes aware of an actual or potential claim, or the GLO provides Provider with notice of an actual or potential claim, Provider may (or in the case of an injunction against the GLO, shall), at Provider's sole option and expense: (i) procure for the GLO 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 a functionally equivalent or superior product or service so that the GLO's use is non-infringing.

8.06 ASSIGNMENT AND SUBCONTRACTS

Provider shall not assign, transfer, or delegate any rights, obligations, or duties under this Contract without the prior written consent of the GLO. Notwithstanding this provision, it is mutually understood and agreed that Provider may subcontract with others for some or all of the services to be performed. In any approved subcontracts, Provider shall legally bind such subcontractor to perform and make such subcontractor subject to all the duties, requirements, and obligations of Provider as specified in this Contract. Nothing in this Contract shall be construed to relieve Provider of the responsibility for ensuring that the goods delivered and/or the services rendered by Provider and/or any of its subcontractors comply with all the terms and provisions of this Contract. Provider will provide written notification to the GLO of any such subcontractor performing fifteen percent (15%) or more of the Work under this Contract, including the name and taxpayer identification number of subcontractor, the task(s) being performed, and the number of subcontractor employees expected to perform services related to the Project.

8.07 HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS) / MENTOR PROTÉGÉ

The Provider is required to provide the GLO with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder. Provider will submit monthly compliance reports (Prime Contractor Progress Assessment Report) to HUB@glo.texas.gov specifying the use, including expenditures to HUB subcontractors, if applicable. Any modifications to the HSP must be submitted to the GLO for prior approval through a HUB Subcontracting Plan Change Order. If the HSP is modified without the GLO's prior approval, the GLO may initiate remedial action as provided in Chapter 2161 of the Texas Government Code.

8.08 RELATIONSHIP OF THE PARTIES

Provider is associated with the GLO only for the purposes and to the extent specified in this Contract, and, in respect to Provider's performance pursuant to this Contract, Provider is and shall be an independent contractor and, subject only to the terms of this Contract, 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 for the GLO any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Provider or any other Party. Provider shall be solely responsible for, and the GLO shall have no obligation with respect to:

- (a) withholding of income taxes, FICA, or any other taxes or fees;
- (b) industrial or workers' compensation insurance coverage;
- (c) participation in any group insurance plans available to employees of the State of Texas;
- (d) participation or contributions by the State to the State Employees Retirement System;
- (e) accumulation of vacation leave or sick leave; or
- (f) unemployment compensation coverage provided by the State.

8.09 COMPLIANCE WITH OTHER LAWS

In the performance of this Contract, Provider shall comply with all applicable federal, state, and local laws, ordinances, and regulations. Provider shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect performance under this Contract. Provider will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

8.10 NOTICES

Any notices required under this Contract shall be deemed delivered when deposited either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

GLO

Texas General Land Office
1700 N. Congress Avenue, Mail Code 158
Austin, TX 78701
Attention: Office of General Counsel

Provider

Vendor

Address

City, State ZIP

Attention: *

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.

8.11 GOVERNING LAW AND VENUE

This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Provider 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 any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.**

8.12 SEVERABILITY

If any provision of this Contract is held unenforceable by a court of competent jurisdiction, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

8.13 FORCE MAJEURE

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant shall be suspended, and the affected Party shall not be liable for damages for failure to comply with such covenant. 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 shall resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, the GLO may terminate this Contract immediately upon written notification to Provider.

8.14 DISPUTE RESOLUTION

If a contract dispute arises that cannot be resolved to the satisfaction of the Parties, either Party may notify the other Party in writing of the dispute. If the

Parties are unable to satisfactorily resolve the dispute within fourteen (14) days of the written notification, the Parties must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve the dispute. This provision shall not apply to any matter with respect to which either Party may make a decision within its respective sole discretion.

8.15 ENTIRE CONTRACT AND MODIFICATION

This Contract, its integrated Attachment(s), and any purchase order issued in conjunction with this Contract constitute the entire agreement of the Parties and 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. Any additional or conflicting terms in such Attachment(s) and/or purchase order shall be harmonized with this Contract to the extent possible. Unless such integrated Attachment or purchase order specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language shall be construed consistently with the terms of this Contract. This Contract may only be amended in a writing executed by authorized representatives of the Parties.

8.16 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract. If the Contract is not executed by the GLO within thirty (30) days of execution by the other Party, this Contract shall be null and void.

8.17 PROPER AUTHORITY

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Provider acknowledges that this Contract is effective for the period of time specified in the Contract. Any services performed by Provider before this Contract is effective or after it ceases to be effective are performed at the sole risk of Provider.

8.18 PREFERENCE FOR TEXAS PRODUCTS AND MATERIALS

If the Contract is for services, Provider, in performing the Contract, shall purchase products and materials produced in the State of Texas when they are available at a price and time comparable to products and materials produced outside this state.

8.19 SURVIVAL OF TERMS AND CONDITIONS

The terms and conditions of this Contract related to the following subjects shall survive the termination of this Contract: definitions; interpretation; warranties; affirmations; prohibition on debts created on behalf of the State of Texas and/or

the GLO; limitation of any Provider claim for damages to the amount of funds appropriated for payment but not yet paid to Provider; ownership; intellectual property; third-party reliance; books and records; inspection and audit; records retention period; confidentiality; public records; insurance; taxes; workers' compensation; unemployment insurance; Provider's obligation to procure and maintain, at its sole expense, all government licenses, authorizations, insurance, waivers, permits, and/or qualifications necessary for Provider or any subcontractors to provide the goods or services described in this Contract; indemnity; assignment and subcontracting; relationship of the parties; compliance with laws; notices; governing law and venue; severability; dispute resolution; merger and integration; invoice and fee verification; property rights; default; and amendment.

8.20 BOYCOTT OF ISRAEL PROHIBITION

Operator represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Operator does not boycott Israel and will not boycott Israel during the term of the Agreement.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR GLO CONTRACT NO. 18-*-***-******

GENERAL LAND OFFICE

PROVIDER***

Anne L. Idsal, Chief Clerk/
Deputy Land Commissioner

Name: _____
Title: _____

Date of execution: _____

Date of execution: _____

CMD _____

OGC _____

DIV _____

DEPDIR _____

DIR _____

DGC _____

GC _____

ATTACHMENTS TO GLO CONTRACT NO. **:**

- ATTACHMENT A – FEDERAL ASSURANCES AND CERTIFICATIONS**
- ATTACHMENT B – SCOPE OF WORK**
- ATTACHMENT C – PROJECT BUDGET**
- ATTACHMENT D – GENERAL AFFIRMATIONS**
- ATTACHMENT E – REQUIRED INSURANCE**
- ATTACHMENT F – BUSINESS ASSOCIATE AGREEMENT**

ATTACHMENTS FOLLOW

ASSURANCES - CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATION REGARDING LOBBYING LOWER TIER COVERED TRANSACTIONS

Applicants should review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 28, "New Restrictions on Lobbying."

LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000 or a loan or loan guarantee over \$150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

In any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.

NAME OF APPLICANT

AWARD NUMBER AND/OR PROJECT NAME

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

DATE

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: ^{4c}	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

THIS FORM SHOULD BE EXECUTED ONLY WHEN REPORTING LOBBYING ACTIVITIES UNDERTAKEN WITH GRANT FUNDS

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

GENERAL AFFIRMATIONS

Provider agrees without exception to the following affirmations:

1. Provider certifies that he/she/it has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, future employment, gift, loan gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
2. Provider certifies that neither Provider nor any firm, corporation, partnership, or institution represented by Provider or anyone acting for such firm, corporation, partnership, or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or federal antitrust laws; or (2) communicated the contents of the Contract or proposal either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for the Contract or proposal.
3. Provider certifies that if its business address shown on the Contract is a Texas address, that address is the legal business address of Provider and Provider qualifies as a Texas Resident Bidder under Texas Administrative Code, Title 34, Part 1, Chapter 20.
4. Section 2155.004 of the Texas Government Code prohibits the GLO from awarding a contract that includes proposed financial participation by a person who received compensation from the GLO to participate in preparing the specifications or request for proposals on which the Contract is based. Under Section 2155.004, Government Code, the vendor [Provider] certifies that the individual or business entity named in this bid or Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
5. Under Texas Family Code section 231.006, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services. Under Section 231.006, Texas Family Code, the vendor or applicant [Provider] certifies that the individual or business entity named in this Contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
6. In accordance with Texas Government Code Section 669.003 (relating to contracting with executive head of a state agency), by entering into the Contract, Provider either certifies that either: (1) it is not the executive head of the GLO, was not at any time during the past four years the executive head of the GLO, and does not employ a current or former executive head of a state agency; or (2) Provider and the GLO have complied with the requirements of the above referenced statute concerning board approval and notice to the Legislative Budget Board. Provider acknowledges that this Contract may be terminated at any time, and payments withheld, if this certification is false.
7. Provider agrees that any payments due under the Contract will be applied towards any debt, including but not limited to delinquent taxes and child support, Provider owes to the State of Texas.
8. The GLO is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism and any subsequent changes made to it. The GLO will

cross-reference Providers/vendors with the federal System for Award Management (<https://www.sam.gov/>), which includes the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

9. Provider certifies: 1) that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity; 2) that Provider is in compliance with the State of Texas statutes and rules relating to procurement; and 3) that Provider is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/>.
10. Under Section 2155.006(b) of the Texas Government Code, the GLO may not enter into a contract that includes proposed financial participation by a person who, during the five year period preceding the date of the bid or award, has been: (1) 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 Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) 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 Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, Provider certifies that the individual or business entity named in the Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
11. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. 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. Provider shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Provider and the requirement to cooperate is included in any subcontract it awards.
12. Provider understands that the GLO does not tolerate any type of fraud. The GLO's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Providers are expected to report any possible fraudulent or dishonest acts, waste, or abuse affecting any transaction with the GLO to the GLO's Internal Audit Director at 512.463.5338 or to tracey.hall@glo.texas.gov.
13. In accordance with Texas Government Code chapter 2270, by signing the Contract, Provider verifies that it does not boycott Israel and will not boycott Israel during the term of the Contract.

NOTE: Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the "Public Information Act," Chapter 552 of the Texas Government Code.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

REQUIRED INSURANCE

GENERALLY. Provider shall, at its sole expense, acquire, maintain, and keep in force for the duration of this Contract, insurance in the amounts attached herein and under the requirements specified herein. Furthermore, unless specified or otherwise agreed to by the GLO, the required insurance shall be in effect prior to the commencement of work by Provider and shall continue in full force until the earlier as appropriate of (i) the expiration of this Contract; or (ii) such time as the GLO notifies Provider that such insurance is no longer required. Any insurance or self-insurance available to the GLO shall be in excess of, and non-contributing with, any insurance required from Provider. Provider's insurance policies shall apply on a primary basis. If, at any time during the Contract, an insurer or surety fails to provide insurance to Provider or otherwise fails to comply with the requirements of this Contract, Provider shall immediately notify the GLO and replace such insurance or bond with an insurer meeting such requirements. General aggregate limits of Provider's Commercial General Liability policy shall apply per project. Provider's auto insurance policy shall apply to "any auto."

Approval. Prior approval of the insurance policies by the GLO shall be a condition precedent to any payment of consideration under this Contract and insurance must be submitted for review and approval by the GLO prior to the commencement of work. Any failure of the GLO to timely approve or failure to disapprove the insurance furnished by Provider shall not relieve Provider of Provider's full responsibility to provide the insurance required by this Contract.

Continuing Coverage. The GLO's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent to this Contract.

Renewal. Provider shall provide the GLO with renewal or replacement certificates no less than thirty (30) days before the expiration or replacement of the required insurance.

Additional Insured Endorsement. The GLO, its officers, employees, and authorized agents shall be named as additional insureds for all liability arising under this Contract except on Workers' Compensation and Professional Liability policies. **An original additional insured endorsement signed by an authorized insurance company representative must be submitted to the GLO to evidence the endorsement of the GLO as an additional insured on all policies, and the certificate(s) must reference the related GLO Contract Number.**

Subrogation. Each liability insurance policy, except Professional Liability, shall provide for a waiver of subrogation as to the State of Texas, the GLO, and their officers, employees, and authorized agents, and shall be issued by insurance companies authorized to do business in the State of Texas, and currently rated by A.M. Best as "A-" or better.

Policy Cancellation Endorsement. Except for ten (10) days' notice for non-payment of premium, each insurance policy shall be endorsed to specify that without 30 days' prior

written notice to the GLO, the policy shall not be canceled, non-renewed, or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address specified in this Contract. A copy of this signed endorsement must be attached to this Contract.

Alternative Insurability. Notwithstanding the requirements of this Attachment, the GLO reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies and/or bonds required. It will be Provider's responsibility to recommend to the GLO alternative methods of insuring the Contract. Any alternatives proposed by Provider should be accompanied by a detailed explanation regarding Provider's inability to obtain insurance coverage as described in this Contract. The GLO shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

INSURANCE REQUIRED:

\$1 MILLION COMMERCIAL GENERAL LIABILITY (EACH OCCURRENCE)
\$2 MILLION COMMERCIAL GENERAL LIABILITY (AGGREGATE LIMIT)
\$1 MILLION CSL AUTOMOBILE INSURANCE
\$1 MILLION ERRORS AND OMISSIONS
STATUTORY WORKERS' COMPENSATION & EMPLOYERS LIABILITY
- \$1 MILLION EACH ACCIDENT
- \$1 MILLION DISEASE EACH EMPLOYEE
- \$1 MILLION DISEASE POLICY LIMIT

NOTE: Insurance certificates must be in the form approved by the Texas Attorney General, a sample of which follows this page.

Insurance Certificates must:

- (a) be submitted to insurance@GLO.TEXAS.GOV
- (b) **prominently display "GLO Contract No. 18-XXX-000-XXXX and Work Order No. AXXX."** and
- (c) Name the General Land Office as an additional insured.

Failure to submit required insurance forms as instructed may significantly delay the start of work under the Contract.

REQUIRED FORM OF CERTIFICATE FOLLOWS THIS PAGE

BUSINESS ASSOCIATE AGREEMENT

WHEREAS, the Texas General Land Office and Texas Veterans Land Board (collectively, “the Board”) and XXXXXX (“Provider”), each a “Party” and collectively “the Parties”, have entered into GLO Contract No 18-***-***-**** (the “Agreement”) for the provision of skilled nursing care services to residents of the Texas State Veterans Home in El Paso, El Paso County, Texas currently known as the Ambrosio Guillen Texas State Veterans Home (“Veterans Home”); and

WHEREAS, the Congress of the United States enacted the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) which creates a national standard for protecting the privacy and security of patients’ Protected Health Information (“PHI”); and

WHEREAS, the United States Department of Health and Human Services (“HHS”) promulgated rules for the implementation of HIPAA, and pursuant to the “business associate” provisions of the privacy regulations found in 45 CFR § 160 and §164 Subparts A and E (“Privacy Rule”) and security regulations found in 45 CFR § 160 and §164 Subparts A and C (“Security Rule”) and pursuant to the Health Information Technology for Economic and Clinical Health Act of 2009, 42 U.S.C. §§ 17931-39 (the “HITECH Act”), GLO is required to enter into agreements with GLO’s Business Associates to assure that GLO’s Business Associates appropriately safeguard patient information; and

WHEREAS, the State of Texas enacted the Medical Records Privacy Act (“MRPA”), in 2001 and amended the MRPA in 2003 and 2011 creating standards in addition to HIPAA and the HITECH Act for protecting the privacy and security of patients’ PHI; and

WHEREAS, the, in the event of a Breach, as defined hereafter, the GLO is required under Section 2054.1125(b) of the Texas Government Code to notify the Department of Information Resources, Chief Information Security Officer, and state cybersecurity coordinator not later than 48 hours.

WHEREAS, Business Associate provides management and operation services for, or on behalf of, the GLO requiring the use and disclosure of PHI, pursuant to the terms of the Agreement.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. Definitions.

- a. All terms used in this Business Associate Agreement defined in the HIPAA Statute, Regulations, and Rules or HITECH Act shall have the meaning ascribed to them in the HIPAA Statute, Regulation, and Rules, or HITECH Act, as applicable.
- b. Capitalized terms used in this Business Associate Agreement shall have the following meanings, provided that if any of the following definitions conflicts with the respective definition of such term in the Privacy Regulations, Security Regulations or HITECH Act, the definition in the Privacy Regulations, Security Regulations or HITECH Act shall control:
 1. **Breach.** “Breach” shall mean the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Regulations which compromises the security or privacy of the PHI, provided that the following shall not constitute a Breach: (A) any unintentional acquisition, access or use of PHI by a workforce member or agent of Business Associate, if it was made in good faith, within the course and scope of such individual’s authority and does not result in further use or disclosure of the PHI; (B) any inadvertent disclosure of PHI by a person authorized to access PHI by Business Associate to another person authorized to access

PHI within the Business Associate organization, provided the PHI is not further used or disclosed; and (C) a disclosure of PHI in which Business Associate has a good faith belief that the unauthorized person to whom the disclosure was made would not reasonably have been able to retain the PHI.

2. **Business Associate.** “Business Associate” shall have the same meaning as the term “business associate” at 45 CFR 160.103 and for purposes of this Business Associate Agreement shall mean XXXXXX, hereafter referred to as “Provider.”
3. **Covered Entity.** “Covered Entity” shall mean, in accordance with 45 CFR § 160.103, (1) A health plan; (2) A health care clearinghouse; (3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA, and, in accordance with Tex. Health & Safety Code § 181.001(b)(2), includes any person who engages in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information, including a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains protected health information on an internet site.
4. **Electronic PHI.** “Electronic PHI” or “ePHI” shall mean PHI which is transmitted by or maintained in electronic media.
5. **GLO.** “GLO” shall mean the Texas General Land Office and shall include the Texas Veterans Land Board.
6. **Hybrid Entity.** “Hybrid Entity” shall mean a single legal entity: (1) that is a Covered Entity; (2) whose business activities include both covered and non-covered functions; and (3) that designates Health Care Components in accordance with 45 CFR § 164.105(a)(2)(iii)(c). The GLO is designated as a Hybrid Entity.
7. **Privacy Rule.** “Privacy Rule” shall mean the standards for privacy of individually identifiable health information found in 45 C.F.R. § 160 & 164.
8. **Protected Health Information (“PHI”).** “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR 160.103 as applied to 45 CFR 164.501, and shall refer to information obtained under the Agreement.
9. **Security Rule.** “Security Rule” shall mean the technical requirements and guidelines found in 45 C.F.R. § 160 & 164.
10. **Unsecured PHI.** “Unsecured PHI” shall mean PHI, in any medium, which is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified in guidance issued by HHS.

SECTION 2. Rights and Responsibilities of Business Associate

- a. Business Associate shall have the right to use and disclose PHI in order to perform services for or on behalf of the GLO, consistent with the terms of this Business Associate Agreement and consistent with the Privacy Rule and Security Rule.
- b. In providing services, Business Associate shall use and disclose PHI only as permitted by the terms of this Business Associate Agreement or as required by law and only to the extent that such use and disclosure would not violate the Privacy Rule, Security Rule, or HITECH Act if performed by

the GLO. Upon the request of GLO, Business Associate may use PHI to provide data aggregation services related to the healthcare operations of the GLO.

- c. Business Associate may use and disclose PHI received during the performance of the Agreement if necessary for the proper management and administration of the Agreement, provided that Business Associate may disclose PHI to third parties not employed by Business Associate only if (i) the disclosure is required by law, or (ii) Business Associate enters into a business associate agreement with the recipient, if the recipient is a subcontractor, or obtains reasonable assurances from the recipient, if the recipient is not a subcontractor, that (A) the PHI will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the recipient, and (B) the recipient will notify Business Associate of any breach of confidentiality of PHI.
- d. To the extent that Business Associate may use or disclose PHI as provided by this Business Associate Agreement and HIPAA, the HITECH Act, or State Law, Business Associate shall limit the disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure.
- e. Business Associate shall utilize appropriate safeguards in accordance with HIPAA and the HITECH Act to prevent any use or disclosure of PHI not authorized by the terms of this Business Associate Agreement.
- f. Business Associate shall utilize administrative, physical, and technical safeguards in accordance with HIPAA and the HITECH Act that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that Business Associate creates, receives, maintains, or transmits for or on behalf of the GLO.
- g. Business Associate shall report to the GLO On-Site Representative and GLO Privacy Officer: (i) any Breach, use, or disclosure of PHI not permitted under the terms of this Agreement without delay and no later than twenty-four (24) hours after becoming aware of such use or disclosure; and (ii) any unauthorized access, use, disclosure, modification, or destruction of Electronic PHI or interference with systems operations in an information system containing Electronic PHI without delay and no later than twenty-four (24) hours after becoming aware of such incident. In the event that Business Associate becomes aware of any violation of any HIPAA provision and fails to notify the GLO and take corrective action, the GLO may immediately terminate the Agreement without prior notice to Business Associate .
- h. With respect to any improper uses and disclosures of PHI reported to GLO under Section 2 (g) above that constituted, in Business Associate's determination, a Breach of Unsecured PHI, Business Associate shall also, within six (6) business days of discovering such incident, report to the GLO's Privacy Officer the following: (i) a brief description of the incident, including the date of the incident, the date of the discovery of the incident, and identification of each patient whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, improperly accessed, acquired, used, or disclosed, (ii) a description of the types of Unsecured PHI involved in the incident, (iii) any steps the patient should take to protect himself or herself from harm resulting from the incident, (iv) a brief description of what Business Associate is doing to investigate the incident, mitigate the harm to the patient, and protect against future occurrences; and (v) any other relevant information. Business Associate and the GLO shall cooperate with respect to providing any notification of the Breach to the patient as required by the HITECH Act.

- i. Business Associate shall enter into business associate agreements, pursuant to the “business associate” provisions of the Privacy Rule found in 45 CFR § 160 and §164 Subparts A and E, with agents and subcontractors to ensure that any agent or subcontractor to whom Business Associate furnishes PHI agrees to the same restrictions and conditions that apply under this Business Associate Agreement to Business Associate with respect to PHI.
- j. Business Associate shall take appropriate actions necessary to mitigate any harmful effects known to Business Associate to result from an unauthorized use or disclosure of PHI by Business Associate .
- k. Within twenty-four (24) hours of receiving an individual’s request for access, Business Associate shall allow a person who is the subject of the PHI, his/her legal representative, or the GLO to have access to inspect and copy PHI maintained by the Business Associate . If the Business Associate uses or maintains an electronic health record, Business Associate shall provide such PHI in electronic format, if requested. Copies, if requested must be provided within two (2) business days.
- l. To enable the GLO to respond to a patient’s request to amend the patient’s PHI, Business Associate shall make the requested PHI maintained by Business Associate available to the GLO within twenty (20) business days of receiving a request from the GLO and Business Associate shall amend the patient’s PHI as directed by the GLO.
- m. Business Associate shall (i) maintain a record of its disclosures of PHI according to 45 CFR § 164.528(a)(1), including disclosures not made for the purposes of this Business Associate Agreement, and (ii) within thirty (30) business days of receiving a request for accounting of disclosures, make available to the requestor the following information concerning such disclosures made on or after the date which is six (6) years prior to the request date: the date of disclosure; the name of the recipient and, if known, the recipient’s address; a brief description of the PHI disclosed; and a brief statement of the purpose of the disclosure.
- n. Business Associate shall make all internal practices, books, and records relating to the use and disclosure of PHI received or created by Business Associate on behalf of the GLO available to the Secretary of HHS for the purpose of determining the GLO’s or Business Associate’s compliance with the Privacy Rule or the Security Rule.
- o. Business Associate acknowledges that as required by the HITECH Act, Business Associate shall comply with the requirements of the Security Rule and the other applicable requirements imposed on business associates under the HITECH Act.
- p. If Business Associate conducts electronically any of the administrative or financial healthcare transactions identified as standard transactions under HIPAA for or on behalf of the GLO, Business Associate shall comply with all applicable requirements of the Electronic Transactions and Code Sets Standards promulgated under HIPAA when conducting such standard transactions for or on behalf of Hybrid Entity.
- q. Business Associate shall, pursuant to Tex. Health and Safety Code § 181.101, train its employees within ninety (90) days of employment regarding the state and federal law concerning PHI as necessary and appropriate for the employees to carry out their duties. If the duties of an employee are affected by a material change in state or federal law concerning PHI, Business Associate shall train the employee regarding such material change within a reasonable period, but not later than

one (1) year after the effective date of the material change. Business Associate shall require its employees to sign a statement verifying training and retain the statement for six (6) years.

SECTION 3. Obligations of the Texas General Land Office.

- a. With respect to the use and/or disclosure of PHI by Business Associate , the GLO shall:
 - i. Notify Business Associate in writing of any limitation(s) in its notice of privacy practices, if such limitation(s) would impact Business Associate’s use or disclosure of PHI;
 - ii. Inform Business Associate in writing of any changes in, or revocation of, a patient’s authorization to use or disclose the patient’s PHI, if such action would impact Business Associate’s use or disclosure of PHI; and
 - iii. Notify Business Associate in writing of any restrictions on the use or disclosure of PHI to which the GLO has agreed, if such restriction would impact Business Associate’s use or disclosure of PHI.

SECTION 4. General Provisions.

- a. Business Associate shall comply with all applicable federal and state laws, rules, and regulations in its performance of the Agreement. Omission of a law, rule, or regulation from this Business Associate Agreement does not relieve Business Associate of its duty to comply with such law, rule, or regulation.
- b. The GLO and Business Associate are independent contractors and nothing in this Business Associate Agreement is intended to, nor shall be, construed to create any agency, partnership, employer-employee, or joint venture relationship between them.
- c. This Business Associate Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes any prior or contemporaneous verbal or written agreements, communications, and representations relating to the subject matter hereof. Notwithstanding any provision in the Agreement indicating that it is the sole agreement governing the relationship between the parties, including a provision that the Agreement shall constitute the entire agreement between the parties thereof, the terms of this Business Associate Agreement shall be effective and shall govern the relationship between the parties with respect to the subject matter hereof.
- d. In the event of any inconsistency between the terms of this Business Associate Agreement and the terms of the Agreement, the terms of this Business Associate Agreement shall prevail with respect to the subject matter hereof notwithstanding any contrary provision in the Agreement.
- e. This Business Associate Agreement may be modified or amended only upon mutual written consent of the parties.
- f. Business Associate may not assign its rights and obligations under this Business Associate Agreement without the prior written consent of the GLO.

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- g. Any notices to be given hereunder shall be deemed effectively given when personally delivered, received by electronic means (including facsimile, .pdf, or e-mail) or overnight courier, or five (5) calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to the GLO: Texas General Land Office
 P.O. BOX 12783
 Austin, TX 78711-2873
 Attn: Larissa Cameron, Privacy Officer

If to Provider : XXXXXX

- h. No Third Party Beneficiaries. The terms of this Business Associate Agreement are not intended and shall not be construed to confer upon any person other than the parties hereto any rights, remedies, obligations, or liabilities whatsoever.
- i. A reference in this Business Associate Agreement to any section or provision of HIPAA, the HITECH Act, or State Law means the section or provision as in effect or as amended and for which compliance is required.
- j. The parties shall amend this Business Associate Agreement from time to time, as is necessary to comply with federal and state laws, rules, and regulations.
- k. The respective rights and obligations of Business Associate shall survive the termination of this Business Associate Agreement.
- l. Any ambiguity in this Business Associate Agreement shall be resolved to permit the parties to comply with HIPAA, the HITECH Act, and State law.

The Term of this Business Associate Agreement will be effective as of the date signed by the last party and shall terminate when all PHI provided by the GLO to the Business Associate or created or received by Business Associate on behalf of the GLO is destroyed or, if feasible, returned to the GLO. Upon termination of the Agreement, Business Associate shall, as directed by the GLO, promptly return to the GLO or destroy PHI possessed by Business Associate and its agents or subcontractors and retain no copies or back-up records of PHI. If such return or destruction is infeasible, as mutually determined by the GLO and Business Associate, the obligations set forth in this Business Associate Agreement with respect to PHI shall survive termination of the Agreement and Business Associate shall limit any further use and disclosure of PHI to the purposes that make the return or destruction of PHI infeasible.

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE FOR
GLO CONTRACT NO. 18-***-***-****
BUSINESS ASSOCIATE AGREEMENT**

**TEXAS GENERAL LAND OFFICE AND
VETERANS LAND BOARD**

PROVIDER

Anne L. Idsal, Chief Clerk/
Deputy Land Commissioner

By: _____
Name: _____
Title: _____

Date of execution: _____

Date of execution: _____

OGC _____

PO _____

DD _____

SDD _____

DGC _____

GC _____

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