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# PROFESSIONAL SERVICES CONTRACT
# GLO Contract No. 16-218-000-9596

**THE GENERAL LAND OFFICE** (the "GLO") and **DIXIE WATKINS III & ASSOCIATES**, Tax Identification Number 74-2539515 ("Provider"), each a "Party" and collectively "the Parties," enter into the following contract for professional services (the "Contract") pursuant to Tex. Nat. Res. Code Chapter 31.

## I. DEFINITIONS / INTERPRETIVE PROVISIONS / PROJECT DESCRIPTION

### 1.01 DEFINITIONS

"Administrative and Audit Regulations" means the statutes and regulations included in Chapter 321 of the Government Code; Subchapter F of Chapter 2155 of the Government Code; and the requirements of Article VII herein. State agencies and/or designee's 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, or other submission required to be delivered under the terms of this Contract, in whatever form.

"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.

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"General Affirmations" means the statements in **Attachment A,** 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.

"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 professional services, described in **SECTION 1.03** of this Contract.

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

"Provider" means **Dixie Watkins III & Associates**, selected to accomplish the Project under this Contract.

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

"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

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(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 A, Attachment B, Attachment C.

## 1.03 PROJECT

Provider shall perform, or cause to be performed, professional landscape architecture services for the entire 4.2 acre state-owned site as inscribed by Alamo Plaza on the west, along with Houston, Bonham and Crocket Streets in downtown San Antonio, Bexar County, Texas (the "Project"). The Project shall be performed in accordance with this Contract, all Attachments, and Provider's

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Proposal, attached hereto and incorporated herein in its entirety for all purposes as **Attachment B**.

**1.04 REPORTING REQUIREMENTS**

Provider shall timely submit all reports and documentation that are required under this Contract directly to GLO Project Manager, Kim Barker at Kim.Barker@glo.texas.gov in the manner and form specified by the GLO.

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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 earlier of i) August 31, 2016, or ii) Upon completion of the Project, in its entirety, to the satisfaction of the GLO. 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 Managers 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 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 Provider's Proposal in **Attachment B**, Basic Services Fee and the estimated reimbursable expenses. Compensation for the Project shall be an amount not to exceed **FIFTY-ONE THOUSAND TWO HUNDRED DOLLARS ($51,200.00)**.

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 direct[1] 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; with a copy to the GLO Project Manager at Kim.Barker@glo.texas.gov; and

(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. 16-218-000-9596"**

Failure to submit requests for payment as instructed may significantly delay payment under the Contract.

Payments to Provider are subject to the Prompt Pay Act.

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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 approval by the GLO, at rates determined by the GLO.

DocuSign Envelope ID: C7675DD9-D7E1-4542-BD7D-32F6BA2608D9

## 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 that they are applicable, Provider further certifies that the General Affirmations in **Attachment A** have been reviewed, and that Provider is in compliance with each of the requirements reflected therein.

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DocuSign Envelope ID: C7675DD9-D7E1-4542-BD7D-32F6BA2608D9

## V. STATE FUNDING

### 5.01 STATE FUNDING

(a) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or 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.

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DocuSign Envelope ID: C7675DD9-D7E1-4542-BD7D-32F6BA2608D9

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

### 6.01 OWNERSHIP

The GLO shall own, and Provider hereby assigns to the GLO, all right, title, and interest in all tangible Work.

### 6.02 INTELLECTUAL PROPERTY

(a) All Work performed pursuant to this Contract is made the exclusive property of the GLO. To the extent any Work results in the creation of Intellectual Property, all right, title, and interest in and to such Intellectual Property shall vest in the GLO upon creation and shall be deemed to be a "work made for hire" and made in the course of the services rendered pursuant to this Contract.

(b) To the extent that title to any such Intellectual Property may not by law vest in the GLO, or such Intellectual Property may not be considered a "work made for hire," all rights, title, and interest therein are hereby irrevocably assigned to the GLO. 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.

(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 defined herein without any charge or expense beyond the stated amount payable to Provider for the services authorized under this Contract.

### 6.03 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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DocuSign Envelope ID: C7675DD9-D7E1-4542-BD7D-32F6BA2608D9

## 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

Pursuant to Texas Gov't Code Chapter 2262, Provider agrees that all relevant records related to this Contract, including the records of its Subcontractors, shall be subject to the Administrative and Audit Regulations. Provider understands that acceptance of state funds under this Contract, directly or indirectly as a subcontractor, acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. Accordingly, such records shall be subject at any time to inspection, investigation, examination, audit, and copying at any location where such records may be found, with or without notice from the GLO or other government entity with necessary legal authority. Provider agrees to cooperate fully with any federal or state entity in the conduct of inspection, investigation, examination, audit, and copying, including providing all relevant records and information requested.

### 7.03 PERIOD OF RETENTION

All records relevant to this Contract shall be retained for a minimum of seven (7) years, or as required by federal regulations applicable to the Project, if any. 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 agree to 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

DocuSign Envelope ID: C7675DD9-D7E1-4542-BD7D-32F6BA2608D9

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 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.

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DocuSign Envelope ID: C7675DD9-D7E1-4542-BD7D-32F6BA2608D9

## 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 C** 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

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

2) PROVIDER AGREES TO INDEMNIFY AND HOLD HARMLESS THE GLO, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. PROVIDER SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY PROVIDER WITH THE GLO NAMED AS A DEFENDANT IN ANY LAWSUIT AND PROVIDER MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE

DocuSign Envelope ID: C7675DD9-D7E1-4542-BD7D-32F6BA2608D9

FROM THE GLO. PROVIDER AND THE GLO AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**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 agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

**8.04 INDEMNITY**

**PROVIDER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND THE GENERAL LAND OFFICE AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS ARISING OUT OF, OR CONNECTED WITH, OR RESULTING FROM:**

- **ANY NEGLIGENT ACTS OR OMISSIONS OF PROVIDER, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROVIDER, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF PROVIDER, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**

- **ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, RULE, OR BREACH OF CONTRACT BY PROVIDER, ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROVIDER, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF PROVIDER, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT.**

**PROVIDER SHALL COORDINATE ITS DEFENSE WITH THE GENERAL LAND OFFICE AND ITS COUNSEL. THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE PROVIDER TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE GENERAL LAND OFFICE FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE GROSS NEGLIGENCE OF THE GENERAL LAND OFFICE OR ITS EMPLOYEES. THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS CONTRACT.**

**8.05 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

DocuSign Envelope ID: C7675DD9-D7E1-4542-BD7D-32F6BA2608D9

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.

## 8.06 HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS) / MENTOR PROTÉGÉ

In accordance with State law, it is the GLO's policy to assist HUBs whenever possible, to participate in providing goods and services to the agency. The GLO encourages those Parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling their obligations with the GLO. The GLO encourages the Parties it contracts with to partner with certified HUBs that participate in the Comptroller's Mentor Protégé Program.

## 8.07 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.

DocuSign Envelope ID: C7675DD9-D7E1-4542-BD7D-32F6BA2608D9

## 8.08 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.

## 8.09 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**
Dixie Watkins III & Associates
11 Lynn Batts Lane, Suite 110
San Antonio, TX 78218
Attention: Dixie Watkins III

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.

## 8.10 GOVERNING LAW AND VENUE

This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought 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 SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.**

## 8.11 SEVERABILITY

DocuSign Envelope ID: C7675DD9-D7E1-4542-BD7D-32F6BA2608D9

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

## 8.12 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.

## 8.13 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.

## 8.14 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.

DocuSign Envelope ID: C7675DD9-D7E1-4542-BD7D-32F6BA2608D9

## 8.15 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.

## 8.16 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.

**SIGNATURE PAGE FOLLOWS**

DocuSign Envelope ID: C7675DD9-D7E1-4542-BD7D-32F6BA2608D9

# SIGNATURE PAGE FOR GLO CONTRACT NO. 16-218-000-9596

**GENERAL LAND OFFICE**

DocuSigned by:

Anne L. Idsal, Chief Clerk/
Deputy Land Commissioner

Date of execution: 1/27/2016

**DIXIE WATKINS III & ASSOCIATES**

DocuSigned by:

Name: Dixie Watkins III
Title: Landscape Architect

Date of execution: 1/27/2016

LS

DIV

PM

DEPDIR

DIR

AGC

GC

**ATTACHMENTS TO GLO CONTRACT NO. 16-218-000-9596:**

**ATTACHMENT A – GENERAL AFFIRMATIONS**
**ATTACHMENT B – PROVIDER'S PROPOSAL**
**ATTACHMENT C – REQUIRED INSURANCE AND FORM**

**ATTACHMENTS FOLLOW**

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## GENERAL AFFIRMATIONS

Provider agrees without exception to the following affirmations:

1. The Provider 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 this Contract.
2. Pursuant to Title 10, Section 2155.004 of the Texas Government Code, the Provider has not received compensation from the GLO for preparing any part of this Contract.
3. Under Section 231.006, Family Code, 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. Any Provider subject to this section must include names and Social Security Numbers of each person with at least twenty-five percent (25%) ownership in the business entity named in this Contract. This information must be provided prior to execution of any offer.
4. Provider certifies by signing this Attachment that: (a) the entity executing this Contract; (b) its principals; (c) its subcontractors; and (d) any personnel designated to perform services related to the work herein described are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal Department or Agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as Pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Provider's subcontracts if payment in whole or in part is from federal funds.
5. In addition, Provider certifies it is in compliance with all State of Texas statutes and rules relating to procurement; and that the participants named in items 4(a) through 4(d) above are not listed on the federal government's terrorism watch list described in Executive Order 13224. Entities ineligible for federal procurement are listed at **https://www.sam.gov/portal/public/SAM/**, which Provider may review in making this certification. Provider acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate. This provision shall be included in its entirety in Provider's subcontracts if payment in whole or in part is from federal funds.
6. Provider agrees that any payments due under this Contract will be applied towards any debt, including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.
7. Provider certifies that it is in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If this section applies, Provider will complete the following information in order for the bid to be evaluated:

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Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency:_____

Position with Provider:_____

Date of Employment with Provider: _____

8. Provider agrees to comply with Texas Government Code, Title 10, Subtitle D, Section 2155.4441, relating to the purchase of products produced in the State of Texas under service contracts.

9. Provider understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Provider further agrees to cooperate fully with the State Auditor's Office, or its successor, in conducting the audit or investigation, including providing all records requested. Provider will ensure that this clause is included in any subcontract it awards.

10. Provider certifies that if it employs any former employee of the GLO, such employee will perform no work in connection with this Contract during the twelve (12) month period immediately following the employee's last date of employment at the GLO.

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

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.

**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.**

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# EXHIBIT A
## SCHEDULE OF BASIC SERVICES

Dixie Watkins III & Associates (DWA) will provide Landscape Analysis, Planning and Design Services for the Alamo Complex Site Work. The scope of work will include the entire 4.2 acre state-owned site as inscribed by Alamo Plaza on the west, along with Houston, Bonham and Crockett Streets. The scope of work for this project will include the following phases and products:

**Schematic Design Phase:**

**I.** ***Documentation***

***A. Inventory***

1. Inventory of all significant plant material on site; inclusive of genus and species, native provenance, and integration into a matrix of appropriateness for the site.
2. Assessment of all trees; as to aesthetics, regionalism, and site-specific integrity.
3. Investigation and forensics on the irrigation system.
4. Complete analysis and investigation to adequately document pedestrian flow-paths as to various potential slip/trip hazards, accessibility compliance and related ADA issues.
5. Assessment of current lighting regime as relates to both the landscape and open-air spaces.
6. Inventory of all 'vertical' elements in the hardscape; site furniture, fences, fountains, trash receptacles, barricades, etc.

***B. Analysis and Evaluation***

By each of the above categories (1-6), after full analysis and evaluation by all sub-consultants, DWA staff will prepare plans and reports that clearly depict site-specific strengths, opportunities, weaknesses and liabilities. These objective levels of analysis will be further refined through a more subjective lens of historic and context appropriateness as to aesthetics, regionalism, and the way each affects the greater narrative of interpretive potential for the site as a whole.

***C. Assessment and Direction***

DWA will then conduct a joint meeting with GLO Staff and assigned Team representatives to review, assess, and prioritize potential design responses, remediation and/or removals of non-contributing site elements.

**Design Development Phase:**

**II.** ***Planning***

Based on the direction and consensus of the GLO and Team, DWA will prepare revised, scaled drawings to reflect the overall strategy for the site as a whole. Different alternatives will be prepared and assessed as to cost and feasibility. From these efforts, and with the determination of the GLO and its Team, DWA will help to select the optimal Phase 1 for preparation of site work package(s).

### *A. Phase I Site Work*

**Interim Maintenance Staff Intervention:**

Prior to the preparation of Construction Documents for bid and execution, and bsed on Owner/Team concurrence from the previous step (planning analysis), DWA will prepare an initial scope of work to have Alamo Complex staff remove, remediate, modify and/or strategically address certain site enhancement measures as deemed to be within their capabilities.

**Construction Documents Phase:**

In concert with the project engineers, DWA will prepare the agreed upon Phase I landscape design construction documents. Final package will integrate the specific solutions and recommendations from the Civil Engineer's plans into the landscape drawings to produce solutions that integrate universal design and best management practices (BMPs) whenever and wherever appropriate.

**Construction Phase:**

Participate as requested with Owner and contractors in a *Pre-Construction Meeting.*

Provide site visits strategically throughout the process to help guide, interpret, and suggest general adherence to details and specifications that relate to DWA's design. In concert with Owner, make such observations to help verify substantial acceptable completion for the project's component parts.

### *B. Phase II Site Work*

**Construction Documents Phase:** T.B.D. in the interim or after preparation and acceptance of the master plan.

**Construction Phase:** T.B.D. in the interim or after preparation and acceptance of the master plan.

# EXHIBIT B
## FEE SCHEDULE

1. **Fixed Fee**. The total fees for the Basic Services will be $49,000 ("Basic Services Fee").

2. **Payment**. Invoices for Basic Services shall be generated on a monthly basis to match the level of progress for each phase as described in Exhibit A. Payment shall be due within ten (10) days after the date of such invoices. The Basic Services Fee shall be based on the following percentages:

| PHASE | PERCENTAGE OF BASIC SERVICES FEE |
|---|---|
| | |
| Schematic Design Phase | 35% |
| Design Development Phase | 25% |
| Construction Documents Phase | 35% |
| Construction Phase | 5% |

3. **Retainer.** Upon execution of this Agreement, Owner shall pay to Landscape Architect the sum of $ 0 ("Retainer"), which Retainer shall be applied and credited to the subsequent payments due hereunder.

4. **Reimbursable Expenses (Please see Exhibit C).** When not covered by the accompanying reimbursable allowances as agreed to as part of this contract as a NTE amount (Reference Exhibit C), and only when authorized in advance by Owner; Owner shall reimburse Landscape Architect for all Reimbursable Expenses based on our current In-House Service rates and at cost plus 15% for Outside Services. Reimbursable Expenses will be billed on the third Friday of the month with invoices generated and sent out at, or before, the end of the month. Payment will be due within ten (10) days after the date of such invoice.

5. **Additional Services.** Any and all work by Landscape Architect, beyond that as described in Exhibit A, 'Basic Services,' or to meet and/or facilitate such work as requested to be in compliance with local municipal, county, state, and federal requirements shall be deemed an additional service. Unless otherwise agreed in writing by Landscape Architect and Owner, fees for Additional Services shall be billed on an hourly basis (rounded to the nearest quarter hour) at the following rates:

| SERVICE PROVIDER | HOURLY RATE |
|---|---|
| Principal | $160 |
| Senior Associate | $120 |
| Associate | $100 |
| Junior Associate | $ 90 |
| Designer | $ 75 |
| Administrator | $ 65 |

Fees for Additional Services will be billed on the third Friday of the month with invoices generated and sent out at, or before, the end of the month. Payment will be due within ten (10) days after the date of such invoice.

**EXHIBIT C**
**Projected Reimbursable Expenses**

The following categories and estimated costs for the reimbursables for this project are to be assessed against the total aggregate amount NTE, and not capped per line item estimate.

| | |
|---|---|
| Color Printing | $600 |
| B & W Printing | $740 |
| Mountings | $360 |
| Mileage | $500 |
| Estimated total NTE | $2200 |

**Reimbursable Expenses**

*Effective date: 5/31/2013*

*Owner will reimburse Dixie Watkins III & Associates for all applicable Reimbursable Expenses, at the following rates:*

***In-House Services:***

B/W Prints Bond..... $1.75 per s.f.
B/W Prints Vellum ..... $4.00 per s.f.
Color Prints Bond (Heavy Ink).... $5.50 per s.f.
Color Vellum (Heavy Ink) ..... $5.25 per s.f.
Color Prints Bond (Light Ink) ..... $3.25 per s.f.
Color Vellum (Light Ink)..... $4.75 per s.f.
Foam Core Mounting ..... $3.00 per s.f.
Mileage (outside S.A. area) ..... $.IRS Rate per mile

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## 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.

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 and Workers' Compensation, shall provide for a waiver of subrogation as to all additional insureds, 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

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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:**

**STATUTORY WORKERS COMPENSATION**
**$1 MILLION GENERAL LIABILITY**
**$1 MILLION CSL AUTOMOBILE INSURANCE**

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

The General Land Office must be named as an additional insured and the Certificate must reference GLO Contract No. 16-218-000-9596.

**REQUIRED FORM OF CERTIFICATE FOLLOWS THIS PAGE**

ACORD®

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

REQUIRED FORM OF INSURANCE

CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A : | |
| INSURER B : | |
| INSURER C : | |
| INSURER D : | |
| INSURER E : | |
| INSURER F : | |

INSURED

List the exact, correct name of each producer, and insert the NAIC number for each ---------->

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| | GENERAL LIABILITY | | | | | | EACH OCCURRENCE | $ |
| | COMMERCIAL GENERAL LIABILITY | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | $ |
| | CLAIMS-MADE / OCCUR | | | | | | MED EXP (Any one person) | $ |
| | | | | | | | PERSONAL & ADV INJURY | $ |
| | | | | | | | GENERAL AGGREGATE | $ |
| | GEN'L AGGREGATE LIMIT APPLIES PER: POLICY / PRO-JECT / LOC | | | | | | PRODUCTS - COMP/OP AGG | $ |
| | | | | | | | | $ |
| | AUTOMOBILE LIABILITY | | | | | | COMBINED SINGLE LIMIT (Ea accident) | $ |
| | ANY AUTO | | | | | | BODILY INJURY (Per person) | $ |
| | ALL OWNED AUTOS / SCHEDULED AUTOS | | | | | | BODILY INJURY (Per accident) | $ |
| | HIRED AUTOS / NON-OWNED AUTOS | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | | | | | | | $ |
| | UMBRELLA LIAB / OCCUR | | | | | | EACH OCCURRENCE | $ |
| | EXCESS LIAB / CLAIMS-MADE | | | | | | AGGREGATE | $ |
| | DED / RETENTION $ | | | | | | | $ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | | | WC STATU-TORY LIMITS / OTH-ER | |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | N / A | | | | | E.L. EACH ACCIDENT | $ |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE | $ |
| | | | | | | | E.L. DISEASE - POLICY LIMIT | $ |
| | | | | | | | | |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Reference the GLO Contract or Work Order number here, and list the GLO as an additional insured.

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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