



CEMETERY MANAGEMENT AND OPERATION

INTERLOCAL COOPERATION AGREEMENT

BETWEEN

THE GENERAL LAND OFFICE AND VETERANS LAND BOARD

AND

THE CITY OF KILLEEN, TEXAS

GLO CONTRACT No. TBD

MANAGEMENT AND OPERATIONS INTERLOCAL COOPERATION AGREEMENT FOR THE TEXAS STATE VETERANS CEMETERY IN KILLEEN, TEXAS

This management and operations interlocal cooperation agreement (the “Contract”) is executed between the **GENERAL LAND OFFICE** and the **VETERANS LAND BOARD**, each an agency of the State of Texas (collectively “the Board”), and the **CITY OF KILLEEN** (“Provider”), each a “Party” and collectively as “the Parties,” enter into the following agreement for Cemetery Management and Operation services (the “Contract”) pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

RECITALS

WHEREAS, the Board has selected Provider to engage in the Management and Operation services at the Texas State Veterans Cemetery located in Killeen, Texas (the “Veterans Cemetery”); and

WHEREAS, the Board desires to engage Provider to perform Management and Operation services at the Veterans Cemetery on behalf of the Board; and

WHEREAS, subject to the terms and provisions set forth below and for receipt of the consideration provided for in this Contract, Provider desires to assume, and the Board is willing to grant Provider, responsibility for Management and Operation services at the Veterans Cemetery;

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants of the Parties set forth in this Contract, the receipt and sufficiency of which are expressly acknowledged by each of Parties, it is hereby agreed as follows:

ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.01 DEFINITIONS

Unless the context clearly requires otherwise, the capitalized terms defined below shall have the following meanings:

“[Administrative and Audit Regulations](#)” means all applicable statutes, regulations, and other laws governing administration or audit of this Contract which may include Title 2 Part 200 and Title 38 Part 39 Code of Federal Regulations and Chapters 321 and 791 of the Texas Government Code and the requirements of Article VII of this Contract.

“[Affiliate](#)” means any individual or entity that, directly or indirectly, is in control of, is controlled by, or is under common control with, Provider or the Board. Provider or the Board 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.

“[Applicable Law](#)” means any law, statute, ordinance, rule, regulation, or any recorded covenant or deed restriction applicable to the Veterans Cemetery.

“[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.

“BOSS” means the U.S. Department of Veterans Affairs Burial Operations Support System.

“Capital Equipment” means Equipment excluding Consumables and Information Technology Equipment, the cost of which for a single unit equals or exceeds \$1,000.00 before taxes, if applicable.

“Capital Expenditures” means expenditures for Capital Equipment and/or Capital Improvements.

“Capital Improvement” means any Improvement, the cost of which is equal to or exceeds \$1,000.00 before taxes, if applicable, and/or (ii) any Improvement, the cost of which for a single addition or alteration is less than \$1,000.00 but is required in multiples the aggregate cost of which exceeds \$1,000.00, before taxes, if applicable.

“Consumables” means all goods including, without limitation, office supplies, paper products, fertilizer, chemicals, fuels, oils, lubricants, paint, sealant, grass seed, flowers, plants, and any other Non-Capital Expenditures that are routinely used and replenished, as required to operate the Veterans Cemetery. Consumables shall be characterized as an Operating Expense.

“Contract” means this Cemetery Management and Operation Interlocal Cooperation Agreement.

“Date of Separation” means Provider’s last day of physical operation at the Veterans Cemetery under this Contract.

“Equipment” means all items necessary for the operation of the Veterans Cemetery, including tractors, mowers, excavation equipment, hand and machine tools, spare or replacement machine parts or other items necessary for maintenance of buildings and grounds. “Equipment” does not include Consumables or Information Technology Equipment.

“Event of Default” means those events enumerated in **ARTICLE IX** of this Contract.

“Force Majeure” means the occurrence of any of the following for the period of time, if any, that the performance of Provider or the Board’s material obligations under this Contract are actually, materially, and reasonably delayed or prevented thereby:

- (i) acts of God;
- (ii) the enactment, imposition, or modification of any Applicable Law which occurs after the effective date of this Contract and that prohibits or materially impedes the performance of a party’s material obligations under this Contract;
- (iii) the confiscation, seizure, or condemnation of the Veterans Cemetery by any governmental agency;
- (iv) arrests or other restraints of government (civil or military, but excluding restraints on the performance of a party’s material obligations under this Contract occurring as a result of any violations by the party claiming the right to delay performance of the terms and provisions of this Contract);
- (v) blockades, insurrections, riots, or civil disturbances; epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, wash-outs, explosions, nuclear reaction, radiation, or radioactive contamination; acts or the failure to act

of any governmental agency (exclusive of the Board's actions pursuant to this Contract); or

- (vi) any other causes, whether of the kind herein enumerated or otherwise, which are not reasonably within the control of the party (or any Affiliate actually controlled by such party) claiming the right to delay performance on account of such occurrence and which, in any event, are not foreseeable or a result of the negligence or willful misconduct of, or in the control of, the party (or its Affiliates) claiming the right to delay performance on account of such occurrence.

Force Majeure shall not include:

- (i) increases in costs of materials for operations of the Veterans Cemetery or other costs required to be paid by a Party in the performance of its obligations under this Contract;
- (ii) a Party's financial inability to perform (including when caused by failure of government authority to act); or
- (iii) the impact of weather conditions to the extent normally encountered in the Killeen, Texas, area not listed in (v) of the definition of Force Majeure above.

"GAAP" means "generally accepted accounting principles."

"GASB" means the Governmental Accounting Standards Board.

"HSP" means the HUB Subcontracting Plan as described in Texas Government Code Chapter 2161, Subchapter F and related provisions of the Texas Administrative Code.

"HUB" means Historically Underutilized Business, as defined by Texas Government Code Chapter 2161.

"Improvement" means any addition or alteration of the buildings or grounds (including irrigation systems, and roads) of the Veterans Cemetery.

"Information Technology Equipment" means all hardware, computers, computer components (monitors, mice, keyboards, memory, storage drive(s), media, etc.) routers, network equipment, transmission equipment, cabling, wiring, and software.

"Insolvency Proceeding" means, with respect to Provider:

- (i) any case, action, or proceeding with respect to Provider before any court or other governmental authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up, or relief of debtors; or
- (ii) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other similar arrangement with respect to its creditors generally, or any substantial portion of its creditors; undertaken under U.S. Federal, state, or foreign law, including the Bankruptcy Code.

"Maintenance" means performing all scheduled, routine, and preventive maintenance on all headstones, Equipment, Improvements, and appurtenances thereto, and maintaining them in at least as good a condition as that in which they were delivered, allowing for reasonable wear and tear, but excluding Repairs.

"Material Compliance" means to comply with any essential element(s) proscribed or directed by any statute, regulation, procedure, and/or standard pertaining to this Contract.

“NCA” shall mean the National Cemetery Administration of the VA.

“Non-Capital Equipment” means any Equipment that is not Capital Equipment.

“Non-Capital Improvements” means any Improvement that is not a Capital Improvement.

“OAR” means an operator action request that Provider must submit to the Board when requesting approval to undergo construction, purchase Capital Equipment, make Capital Expenditures, purchase Capital Improvements, or for any other purchases or improvements that the Board has agreed to reimburse.

“On-Site Representative” means the designated Board employee who may maintain an office in the Veterans Cemetery (at the expense of the Board’s Administration services provider) to oversee the operations of the Veterans Cemetery on behalf of the Board.

“Operating Expenses” means all expenses associated with the operation and management of the Veterans Cemetery except Capital Expenditures and depreciation.

“Operating Manual” means the *Texas Veterans Land Board Cemetery Manual* for the operation of the Veterans Cemetery, delivered to Provider as of the execution of this Contract and as may be amended from time to time, and incorporated herein for all purposes as if physically attached.

“Provider” means **CITY OF KILLEEN, TEXAS**, the entity contracted to provide Management and Operation services at the Veterans Cemetery, as set forth in this Contract.

“Provider’s Fee” means the monthly fee payable by the Board to Provider.

“Regulatory Agency/Agencies” means the United States Department of Veterans Affairs (“VA”), the National Cemetery Administration of the VA (“NCA”), the Texas Health & Human Services Commission (“HHSC”) and any other applicable governmental agency.

“Repair” means to restore to proper working condition any Equipment or Improvement.

“Transition Plan” means a comprehensive plan to transition the Management and Operation services at the Veterans Cemetery to a successor vendor upon the expiration or termination of this Contract for any reason, which plan shall cover a period not to exceed one hundred twenty (120) days, unless otherwise provided for in this Contract.

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

“Utilities” means water, wastewater, natural gas, electricity, sewer, fuels (including diesel oil, propane, and gasoline), telephone, cable television or satellite system, internet, and garbage disposal.

“Veterans Cemetery” means the Texas State Veterans Cemetery located in Killeen, Texas.

“Veterans Cemetery Records” means all of the books and records pertaining to the operation of the Veterans Cemetery.

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, exhibit, 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 agreements (including this Contract) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent 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 and schedules referenced in this Contract are either attached hereto physically or are incorporated by reference, and 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, any reference to any action of the Board or by the Board 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 Board shall not be unreasonably withheld.
- (h) Unless otherwise expressly provided, if any provision under this Contract states that Provider must comply with all requirements of a statute, regulation, Regulatory Agency, or similar standard, such provision shall mean that Provider must be in Material Compliance with such requirements; and
- (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 Contract and attachments in the following order of priority: Signed Contract; attachments to the Contract in the following order: **Attachment C, Attachment A, Attachment B, Attachment F, Attachment D, Attachment E, and Attachment G.**

1.03 ACCOUNTING PRINCIPLES

Unless the context otherwise clearly requires, all accounting terms shall be construed, and all financial computations required under this Contract shall be made, in accordance with GAAP or GASB, as applicable, consistently applied.

ARTICLE II. AUTHORITY AND CONDITIONS PRECEDENT

2.01 PROVIDER AS MANAGEMENT AND OPERATIONAL SERVICES VENDOR

The Board hereby engages Provider, and Provider, on behalf of the Board, hereby accepts such engagement and agrees to provide management and operational services at the

Veterans Cemetery on the terms and conditions set forth in this Contract and such services shall be payable from current revenues available to the Provider.

2.02 RELATIONSHIP OF THE PARTIES

The relationship of the Parties shall be that of the Board as owner and of Provider as independent contractor. All acts performed by Provider during the term of this Contract shall be deemed to be performed in Provider's capacity as an independent contractor. Nothing contained in this Contract is intended to, or shall be construed to give rise to, the creation of a partnership or joint venture, or to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the Board whatsoever with respect to the indebtedness, liabilities, and obligations of Provider or any other party.

Provider shall be solely responsible for, and the Board 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 Provider's employees (including but not limited to group insurance plans that are available to employees of the State of Texas);
- (d) Participation or contributions to Provider's retirement system (including but limited to participation or contributions by the State of Texas to the State Employees Retirement System);
- (e) Accumulation of vacation leave or sick leave; or
- (f) Unemployment compensation coverage (including that which may be provided by the State of Texas).

2.03 RETENTION OF AUTHORITY BY BOARD

Provider shall provide management and operational services at the Veterans Cemetery in the name of, and for the account of, the Board. Notwithstanding any other provision herein, the Board, by entering into this Contract, does not delegate to Provider any powers, duties, or responsibilities that it is prohibited by law from delegating. The Board also retains all other authority and control that has not been expressly delegated to Provider under this Contract. The Board shall at all times maintain ownership of the Veterans' Cemetery assets including, but not limited to, all buildings, real property, Capital Expenditures, and any other piece of equipment or asset the cost of which is borne by the Board, and ultimate control over the operation of the Veterans Cemetery.

2.04 REGULATORY COMPLIANCE

Provider understands that as a material condition of this Contract and for the purposes of **SECTION 8.03** and **ARTICLE IX**, Provider shall comply with all applicable regulatory requirements, including without limitation all VA and NCA requirements, standards, and guidelines, for the operation of the Veterans Cemetery, including the Board's Operating Manual. Provider will be deemed to have knowledge of these requirements and will be deemed to understand them. To the extent they apply, Provider certifies it has reviewed

the General Affirmations in **Attachment C**, and that Provider is in compliance with all requirements contained therein.

2.05 OPERATIONAL POLICIES

Provider shall operate the Veterans Cemetery in accordance with the Board's Operating Manual, incorporated herein for all purposes as if physically attached.

2.06 BOARD'S ON-SITE REPRESENTATIVE

The Board shall designate an On-Site Representative who shall have the right to participate in Provider's staff meetings regarding the operations of the Veterans Cemetery. The On-Site Representative will closely monitor Provider's compliance with this Contract to protect the interests of the Board. Provider shall not interfere with such duties of the On-Site Representative except as may be reasonably required to fulfill its duties to the Board. Except for emergency situations, the On-Site Representative shall not interfere with Provider's employees as they perform the duties of Provider under this Contract. The Board shall receive and consider any complaints or conflicts that Provider has concerning the status of an On-Site Representative. Furthermore, the Board assumes full responsibility for the consequences of any actions taken by the On-Site Representative in the course of his/her duties, and nothing in this Contract shall be construed as establishing an agency relationship between Provider and the Board's On-Site Representative. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE BOARD**

2.07 INSURANCE AND BONDS

For the duration of this Contract, Provider shall acquire insurance and/or bonds, with financially sound and reputable independent insurers authorized to operate in the State of Texas in the types and amounts necessary and appropriate for managing and operating the Veterans Cemetery in accordance with **Attachment G**. At the request of the Board, Provider shall submit certificates of liability insurance establishing, to the Board's satisfaction, the nature and extent of coverage guaranteed by each policy. Notwithstanding the foregoing, Provider may self-insure if authorized by Chapter 2259 of the Texas Government Code for any of the risks for which coverage is required.

ARTICLE III. REPRESENTATIONS AND WARRANTIES - PROVIDER

3.01 PROVIDER REPRESENTATIONS

To induce the Board to enter into this Contract, Provider hereby represents and warrants to the Board as follows:

(a) Authorization; No Contravention

Provider has taken all necessary action to authorize the execution, delivery, and performance of this Contract. This Contract constitutes the valid and binding obligation and agreement of Provider, enforceable in accordance with its terms. Neither the execution and delivery of this Contract, nor compliance with its terms or provisions will result in any breach of the terms of, conflict with, default related to, or creation of, any lien, charge, or encumbrance upon any property or assets of Provider pursuant to the terms of any indenture, mortgage, deed of trust, note, evidence of indebtedness, agreement, or other instrument to which Provider

may be a party; or by which Provider or any of its properties may be bound; or violate any provision of law, or any applicable order, writ, injunction, judgment, decree of any court, or any order or other public regulation of any governmental commission, bureau, or administrative agency; and

(b) Governmental Authorization

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any governmental agency is necessary or required in connection with the execution or delivery of, or performance by, or enforcement against Provider as relates to this Contract; and

(c) Standard of Performance

In performing its obligations under this Contract, Provider will use best efforts and will act with professionalism in accordance with acceptable and prevailing industry standards, so that the Veterans Cemetery is operated and maintained as a national shrine and in accordance with all applicable federal, state, and local requirements, and consistent with the terms of this Contract.

3.02 NO DEFAULT

No Default or Event of Default on part of Provider exists under **SECTION 9.02** or would result from the execution of this Contract.

3.03 HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS)

Provider shall make a good faith effort to utilize HUBs as defined in Title 1, Part 5, Chapter 111, Subchapter B, Texas Administrative Code; and report all HUB expenditures relevant to this contract to the Board on a monthly basis, concurrently with the invoice for Provider's Fee. Provider may submit an HSP for the length of this Contract demonstrating good faith efforts to utilize HUBs.

The Provider shall provide to the Board pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder. The Provider shall 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 Board for prior approval through a HUB Subcontracting Plan Change Order. If the HSP is modified without the Board's prior approval, the Board may initiate remedial action as provided in Chapter 2161 of the Texas Government Code.

3.04 MARKETING

Provider shall cooperate with the Board in any marketing plans and procedures the Board implements. Provider shall cooperate with the dissemination of informational materials, media releases, and other related informational materials generated by the Board. Provider shall not present, disseminate, or otherwise release any information for any marketing aspects without prior express written approval of the Board. Provider will not issue any media press releases or coordinate press events related to the Veterans Cemetery without prior express written approval of the Board through its Communications department.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES - BOARD

4.01 BOARD REPRESENTATIONS

To induce Provider to enter into this Contract, the Board represents and warrants to Provider as follows:

(a) Payment of Provider's Fee

As complete compensation for the services provided by Provider under this Contract, the Board agrees, in accordance with **ARTICLES VIII AND IX** and **ATTACHMENT D**, to pay Provider's Fee.

(b) Eligibility Rules

The Board shall, in accordance with VA regulations and standards, establish eligibility rules for burial in the Veterans Cemetery.

(c) Utilization

The Board represents that it will use its best efforts to maximize utilization for the Veterans Cemetery. However, the Board does not guarantee that the Veterans Cemetery will operate at any given level of utilization or achieve any rate of burial or interment.

4.02 NO DEFAULT

No Default or Event of Default on the part of the Board exists under **SECTION 9.03** or would result from the execution of this Contract.

4.03 CAPITAL EXPENDITURES

The Board shall contract for and purchase Capital Equipment and make Capital Improvements (collectively "Capital Expenditures") in a manner consistent with state and federal purchasing requirements and with the needs and requirements of the Veterans Cemetery. Provider shall make recommendations to the Board for such Capital Expenditures. The Board shall have the ultimate authority in determining the amount of Capital Expenditures for the Veterans Cemetery, except that the Board shall ensure sufficient Capital Equipment, or such Capital Improvements as are necessary to maintain the Veterans Cemetery as a national shrine.

ARTICLE V. ADMINISTRATION AND OPERATION

5.01 ADMINISTRATION AND OPERATION

Provider shall, in consultation with, for, and on behalf of the Board, at Provider's expense, and subject to the provisions of this Contract, manage and supervise all areas of daily operations of the Veterans Cemetery in accordance with the Board's Operating Manual.

5.02 MODIFICATION OF OPERATING MANUAL

The Board may make modifications to the Operating Manual during the contract term. If Provider believes in good faith that such a modification will result in an increase to the Provider's Budget as outlined in **Attachment D**, the Parties agree to enter into good faith

negotiations to determine if such an increase is necessary and is a result of the Operating Manual modification. This Contract may be amended to increase the budget as a result of an Operating Manual modification upon the mutual written agreement of both Parties. However the Board shall not be obligated to agree to such an increase to the Budget as outlined in **Attachment D**, if the Board determines that the modification will not result in an increase to the Provider's Operating Expenses and the current budget fairly compensates the Provider in accordance with Tex. Gov't Code § 791.011(e).

To the extent that modifications are made to the Operating Manual, Provider is to be given at least 30-day notice prior to the modifications, and a reasonable amount of time, which shall be mutually agreed to by both parties in writing, to comply with the modifications .

5.03 ADMINISTRATIVE FUNCTIONS

Provider must develop and implement all necessary administrative systems including accounting, personnel, reporting, administrative records, purchasing, and information technology systems.

5.04 EMPLOYEE MATTERS

Except for the Board's On-Site Representative, Provider shall (i) recruit, employ, train, promote, direct, discipline, suspend, and discharge all personnel, in compliance with all applicable federal and state employment laws; (ii) establish salary levels, personnel policies, and employee benefits; and (iii) establish employee performance standards as needed during the term of this Contract, to ensure the efficient operation of all departments within, and services offered by, the Veterans Cemetery. The Board shall have the right to review the selection and continued employment of the Veterans Cemetery Director. In the event that the Board has concerns about the selection or continued employment of this individual, the Board shall submit in writing to the Provider objective evidence indicating that such individual has failed to comply with policies or procedures (promulgated either by the Provider or the Board) or that the performance of such individual has not been adequate in accordance with usual and customary standards for such position in the industry. After consultation, Provider shall address such concerns by taking such remedial action as Provider deems appropriate. Nothing contained herein shall in any way be deemed to modify any employee's status as an at will employee of Provider, nor shall any individual fulfilling such position be in any way a third-party beneficiary or receive any other rights or authorities under the terms of this clause. The selection and continued employment of any individual fulfilling this function described above is in the discretion of the Provider.

(a) Background Checks

Prior to employment, all employees shall be subjected to a thorough background investigation in accordance with all applicable federal and state laws and regulations. Background checks shall include criminal history, employment history and, where appropriate, contractor eligibility. In exercising its obligations hereunder, Provider may obtain information from any third parties in the business of providing such investigations. The results and documentation thereof will be maintained by Provider as part of the employee's personnel file.

(b) Orientation and Training

Provider shall provide all personnel with an employee orientation and training program regarding the Board's Operating Manual, and its own internal policies and procedures. Provider shall retain records for all training required under this paragraph. Such records shall be made available for inspection to the Board or the Board's On-Site Representative during regular business hours.

(c) Emergency Staffing

Provider shall, to the extent reasonably possible, use its best efforts to ensure continued operation and appropriate staffing in the event of a catastrophic event, including natural disasters, epidemic, pandemic, war, labor strike, or dispute. However, where the Board's approval is first obtained, staffing costs which exceed Provider's current prevailing wages or salaries for regular full-time employees, but are required to ensure continuing operation, shall not be an Operating Expense of Provider but, instead, shall be an expense of the Board.

(d) Offer of Employment Upon Termination of Contract

Upon termination of this Contract for any cause, the Board or the successor provider selected by the Board shall have the right (but not the obligation) to offer employment to any or all employees of Provider who are regularly employed in providing services at the Veterans Cemetery, in order to ensure the continuing operation thereof.

(e) Board Investigations or Reviews

Upon request by the Board or its designee, when Provider employees are witnesses to relevant events, Provider shall cooperate with the Board for purposes of investigating any potential legal claims made about a Board employee's performance of his/her job duties. Notwithstanding the preceding sentence, such cooperation shall include, without limitation, interviews by the Board's Human Resources department and/or legal counsel- all of which shall require the approval of the Provider's legal counsel only if such potential legal claim involves or may involve a dispute with Provider. Employees shall be made aware of the Provider's obligations outlined in this Contract, specifically **Article VII**.

5.05 DISASTER PREPAREDNESS

Within 30 days from the Effective Date of this Contract, Provider shall submit a disaster preparedness plan which shall include emergency evacuation plans and procedures. The disaster preparedness shall be based on the Board's existing disaster preparedness plan and shall be amended to suit Provider's operations at the Veterans Cemetery. Provider shall submit any proposed amendments to the disaster preparedness plan to the Board. The Board shall review any proposed amendment(s) and shall provide a written response to Provider, within thirty (30) days of receipt indicating whether Provider's proposed amendment(s) has been rejected and stating the basis for such rejection. Provider's disaster preparedness plan shall be in compliance with all applicable federal, state, and local regulations concerning safety and fire prevention, and all of Provider's employees shall receive regular training in disaster preparedness. The Board is the sole authority for

the closure of the cemetery. The Provider will coordinate any emergency closure with the Board's On-site Representative.

5.06 BUDGET

The fiscal year for the Veterans Cemetery will begin October 1 and end September 30th of each year ("Fiscal Year"), coinciding with the Provider's fiscal year. At least ninety (90) days prior to the start of each fiscal year, Provider shall prepare and submit to the Board for its review and approval a proposed Operating Expense Budget and a proposed Capital Expenditure Budget for the Veterans Cemetery. Provider and the Board each agree to utilize best efforts to resolve all budgetary issues and to approve the proposed budgets prior to September 1.

Capital Expenditure Budget. Provider shall notify the Board of the need for the purchase of any Capital Equipment or the addition of any Capital Improvements (collectively "Capital Expenditures") which Provider believes are necessary for the effective management and operation of the Veterans Cemetery under this Contract. The Board shall respond to Provider's recommendation in a timely manner, considering the surrounding circumstances and Provider's request, acknowledging that:

- (i) Provider's recommendation has been rejected and stating the basis for such rejection; or
- (ii) Provider's recommendation has been approved and that the Board will take the appropriate steps to purchase or acquire the recommended Capital Expenditure(s); or
- (iii) the Board has modified Provider's recommendation and the Board will take appropriate steps to purchase or acquire the Capital Expenditure(s) it deems necessary.

5.07 ACCOUNTING

Provider shall prepare and maintain proper, accurate, and complete books, records, and accounts regarding the operations and financial and other transactions related to the management and operation of the Veterans Cemetery to the extent necessary to enable the Board to verify such transactions. All accounting methods should conform to GAAP or GASB, as applicable, be consistently applied, and shall not materially distort income or loss.

5.08 MISCELLANEOUS SERVICES

Provider may perform other duties in connection with its responsibilities under this Article V as the Board from time-to-time may reasonably request. Provider shall prepare a statement of work and obtain the Board's written approval before proceeding with any such requests.

ARTICLE VI. FACILITY MAINTENANCE, CAPITAL ASSETS, PURCHASING, AND SURPLUS PROPERTY

6.01 GENERALLY

Provider shall be responsible for maintaining the building, grounds, headstones, and equipment of the Veterans Cemetery, including performing all routine and preventive Maintenance on all Capital and Non-Capital Equipment and all Capital and Non-Capital

Improvements. Except as otherwise noted in this Contract, all Maintenance (but not Repairs) shall be characterized as an Operating Expense and shall be paid for by Provider.

Notwithstanding the foregoing, the Board and Provider hereby acknowledge and agree that the Board exclusively intends to undertake and complete a raise and realignment project of certain headstones currently in place at the Veterans Cemetery (the "Board's Headstone Project"). The Board's Headstone Project may take place during the term of this Contract. However, day-to-day routine and preventative Maintenance of all headstones shall be completed by the Provider as set out in this Contract and, in accordance with any and all applicable VA and NCA guidelines.

Following the Effective Date of this Contract should more than ten (10%) percent of the headstones in any one of section of the Cemetery require raise and re-alignment Maintenance, the Board shall notify the Provider in writing identifying the applicable section and headstones ("Headstone Maintenance Project"). The Board agrees to enter into good faith discussions with Provider to determine a plan of action which, if mutually agreed upon by both Parties, shall include the operational and financial responsibility of each Party with respect to a Headstone Maintenance Project.

However, Provider hereby represents and warrants that it will not knowingly or willfully disregard its day-to-day routine and preventative headstone Maintenance duties such that a Headstone Maintenance Project becomes necessary. To the extent Provider fails to meet such representation and warranty, the Board is under no obligation to enter into the discussions referenced in this section regarding any Headstone Maintenance Project. Compliance with this representation constitutes a material term of this Contract.

The Board shall include serial numbers and age of Capital and Non-Capital Equipment in the attached exhibits. Board shall deliver the attached items in working condition at the commencement of the Contract.

6.02 LOSS PREVENTION

Within 30 days from the Effective Date of this Contract, Provider shall submit for review by the Board a risk management and loss prevention program designed to prevent the misappropriation, loss, or damage of Capital Equipment and/or Capital Improvements. The Board shall review risk management and loss prevention program plan and shall provide a written response to Provider, within thirty (30) days of requesting edits to the plan and stating the basis for such requests. Provider shall reimburse the Board for any Capital Equipment or Capital Improvement damaged or destroyed as a result of the acts or omissions of Provider and/or its agents, volunteers, and employees. Provider shall be financially responsible to the Board for all losses of Capital Equipment and Capital Improvements that occur due to the negligent or intentional acts of Provider and/or its agents, volunteers, or employees, and not due to reasonable wear and tear.

6.03 FACILITY MAINTENANCE AND REPAIRS

Provider shall be responsible for all Maintenance in the Veterans Cemetery and must maintain in good and working condition, and in sufficient quantity, all Equipment necessary to operate and manage the Veterans Cemetery in a manner consistent with the requirements of this Contract. In addition, Provider shall replace obsolete or run-down Non-Capital Equipment and make Non-Capital Improvements as necessary to maintain a functional and attractive facility.

Provider shall make all Repairs on all Equipment and Improvements in the Veterans Cemetery. However,

- (i) if the subject Equipment or Improvement has exceeded its useful life and frequent repairs become necessary;
- (ii) if the need for such Repair results from a manufacturing, design, or construction defect of the Capital Equipment or a Capital Improvement; or
- (iii) if the Repair meets the definition of Capital Equipment or Capital Improvement in Section 1.01 of this Contract the cost of such repair(s) shall be the responsibility of the Board.

In each instance in which the Board and Provider have a good-faith disagreement regarding the cause of the necessity for Repair or replacement (e.g., whether or not the subject Capital Equipment or Capital Improvement has exceeded its useful life, or whether Provider properly performed its Maintenance obligations with respect thereto, or whether a Repair is necessitated by Provider negligence), Provider shall pay the first \$1,000.00 of the subject Repair or replacement and the Board shall pay the balance. Provider shall notify the Board before performing any Repair for which the Board has the responsibility to pay and may not proceed with such Repair without the express written approval of the Board. Notwithstanding the preceding sentence, Provider shall be responsible for the full cost of any Repair necessitated by the Provider's negligence or intentional failure to perform its maintenance obligations under this Contract. Before performing any Repair the cost of which shall be the responsibility of the Board, Provider shall notify the Board (provided that if Provider reasonably believes that such Repair is needed immediately to avoid threatening the safety of the public, Provider shall proceed to make such Repair and shall notify the Board per emergency OAR procedures but shall not proceed with such Repair without the written approval of the Deputy Director of the Board's TSVC program.)

(a) Warranty Repairs

Provider shall use its best efforts to obtain all necessary warranty repairs on all Capital and Non-Capital Equipment and Capital and Non-Capital Improvements, ensuring they are completed prior to the expiration of the applicable warranty. In complying with this provision, Provider shall not be obligated to incur any financial obligation, except for damages or liability resulting from negligent or intentional failure, omission, or neglect by Provider.

(b) Scheduled Maintenance and Records

Provider shall perform all scheduled or manufacturer-recommended maintenance on all Capital Equipment. Provider shall keep detailed maintenance records in accordance with the manufacturer's specifications on all Capital Equipment at the Veterans Cemetery. Such records shall be made available for inspection to the Board or the Board's On-Site Representative during regular business hours. Such records shall be the basis for determining reimbursement for Repairs under this section.

(c) Janitorial Services

Provider shall provide full janitorial services including dumpster service, trash and debris removal and legal disposal, extermination, and pest control.

6.04 LANDSCAPE MAINTENANCE

Provider shall maintain the Veterans Cemetery grounds and keep them in an attractive condition, appropriate to the seasonal weather and the location's soil, water, climate, and topography in accordance with the Board's Operating Manual. Provider shall ensure that the grass, trees, bushes, shrubs, flowers, and other plants are mowed, trimmed, clipped, watered, and fertilized as seasonally appropriate. Furthermore, Provider shall sweep and clean all sidewalks and outside concrete or paved areas, keeping them free of trash and debris.

6.05 TITLE TO CAPITAL ASSETS

Legal title to all Capital Equipment and Capital Improvements rests with the Board. The Board and Provider acknowledge and agree that the assets set forth in **Attachment A** are the pieces of Capital Equipment present in, or the Capital Improvements made to, the Veterans Cemetery as of the date listed thereon. Furthermore, the Board and Provider agree to review and update **Attachment A** no less than annually. Upon expiration or termination of this Contract for any reason, nothing in this Contract shall operate to transfer title to the Board, or limit the right of Provider to remove, items of equipment or other personal property and supplies purchased solely by Provider (and not charged to the Board) for use by its staff, which items are beyond the usual and customary equipment and supplies required to fulfill Provider's duties under this Contract.

6.06 PURCHASING

Provider shall purchase and pay for all Consumables, Non-Capital Improvements, Non-Capital Equipment, Information Technology Equipment (not otherwise provided by the Board), Utilities not treated as pass-through expenditures by the Board as outlined in **Attachment D**), and any other supplies or provisions required for operation of the Veterans Cemetery. These expenditures shall be characterized as Operating Expenses. Notwithstanding the preceding sentence, the Board may elect to contract directly with the Texas General Land Office (GLO) or a local utility provider for the electricity and natural gas needs of the Veterans Cemetery.

(a) Capital Expenditures; Prohibited

Provider shall not purchase or otherwise acquire for use at the Veterans Cemetery any Capital Equipment or make any Capital Improvement without written approval from Board.

(b) Emergency Capital Expenditures

In the event that Provider believes that the acquisition of Capital Equipment is needed or any Capital Improvement is required immediately, Provider shall so notify the Board and request, after stating the reasons therefor, an emergency purchase of Capital Equipment and/or Capital Improvement. The Board shall respond promptly, but in no event later than twenty-four (24) hours after receiving such emergency request. If such emergency request is approved, the Board and Provider will coordinate the purchase of the Capital Equipment and/or Capital Improvement in an expedited manner. If Provider must act without approval of the Board in order to prevent an immediate threat, legal title to any Capital Equipment purchased by Provider shall rest with Provider; however, title to any Capital Improvement shall remain the property of the Board. The Board will

reimburse Provider for all reasonable emergency Capital Improvement expenditures. In addition, the Board at its option may purchase any Capital Equipment acquired by Provider in an emergency at its fair market value, to be determined at the time the Board exercises its right of purchase.

(c) Third-party Service Contracts

Unless otherwise notified by the Board, Provider shall enter into and pay for all service contracts necessary for the provision of Provider's services at the Veterans Cemetery in a manner consistent with all applicable federal, state, and local laws, regulations, and the terms of this Contract. All contracts between Provider and a third party for such services shall require the third party to allow the assignment, at the Board's direction, of Provider's rights and obligations under such contracts to the Board or to a successor provider chosen by the Board. Provider shall use its good faith efforts to maintain compliance with all contracts. Provider shall execute such contracts in its legal capacity. Prior to engaging any contractor, Provider shall provide a background check, and shall verify the contractor's eligibility for receiving state or federal contracts, using the Texas Comptroller of Public Accounts Vendor Performance Tracking System (<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>) for suspended and debarred vendors, and the U.S. General Services Administration's System for Award Management (<https://www.sam.gov/>). In the event that any third-party service contracts are entered into by the Board (rather than Provider) Provider shall have the right to consult with the Board on any such contracts which have an effect on Provider's ability to comply with the terms of this Contract. If at any time during the term of this Contract Provider presents to the Board objective evidence of any non-compliance by any contractor selected by the Board, which non-compliance impairs or affects Provider's ability to effectively perform its functions under this Contract, the Board shall secure corrective action by the contractor in default thereof, up to and including termination.

(d) State and Federal Contracts

The Board at its option may make available to Provider or Provider's subcontractors the ability to purchase goods and services under State Term Contracts (STC) or Federal Supply Schedules (FSS). If Provider engages in such contracts, all purchases must be made for the exclusive use of the Veterans Cemetery and in accordance with the particular terms of the contract.

(e) Information Technology Equipment

The Board shall provide the Information Technology Equipment listed on **Attachment B** needed for the VA-mandated burial management system "BOSS" and communication with the Board. Any additional Information Technology Equipment needed for the operation of the Cemetery shall be the responsibility of Provider and shall be characterized as an Operating Expense.

6.07 SURPLUS PROPERTY

Provider shall submit to the Board no later than 30 calendar days from the first day of each Fiscal Year, a list of all Equipment (if any) Provider believes is surplus or is beyond repair. Provider shall cooperate with the Board in disposing of such equipment in

accordance with applicable state and federal surplus property disposal laws, rules, or regulations.

6.08 MISCELLANEOUS SERVICES

Provider may perform other duties in connection with its responsibilities under this Article as the Board from time to time may reasonably require. Provider will prepare a statement of work and obtain the Board's written approval before proceeding with any such requests.

ARTICLE VII. RECORDS, REPORTS, AND INSPECTION AND AUDIT

7.01 OWNERSHIP OF DOCUMENTS AND WORK PAPERS

To the extent allowed by law, the Board shall own all records, documents, files, reports, work papers, and working documentation created in connection with the Veterans Cemetery, electronic or otherwise, except that Provider's internal administrative files, and internal correspondence shall remain the property of Provider. Provider shall be entitled to retain a set of such work papers for its files. Upon termination of this Contract, Provider shall deliver such documents to the Board no later than 30 calendar days after the date of termination.

Provider agrees not to use records, documents, files, reports, work papers, and working documentation created in connection with the Veterans Cemetery, electronic or otherwise for unrelated commercial purposes, advertising or advertising-related services, or for any other purpose not explicitly authorized by the Board in this Contract.

7.02 BOARD ACCESS TO RECORDS

The Board or any duly authorized representative(s) shall have; for the purpose of making audits, examinations, excerpts, and transcriptions; unimpeded, prompt access to any of Provider's books, documents, papers, and/or records that are maintained or produced relevant to this contract. Provider shall retain all records (not otherwise returned to Board as per Section 7.01) related to this Contract for seven (7) years after final payment is made under this Contract and all pending matters are closed. However, if any audit, litigation, or other action is commenced before the end of the seven (7) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the seven (7) year period, whichever is later. Notwithstanding the terms of this provision, however, the retention of any records by Provider shall be in accordance with all state and federal regulations and requirements, as well as the record retention policy promulgated by Provider and approved by the Board.

Provider shall comply with all applicable federal and state privacy data protection laws, as well as other applicable regulations for any data received by or collected on behalf of the Board.

7.03 GOVERNMENT ACCESS TO BOOKS AND RECORDS

Provider shall comply with all applicable federal and state laws and regulations governing the maintenance of documentation to verify the cost of services rendered under this Contract. Provider agrees that all relevant records related to this Contract or any work product under this Contract, including the practices of its subcontractors, shall be subject, at any reasonable time to inspection, examination, review, audit, and copying at

any office or location of Provider where such records may be found, with or without notice by the Board, Texas State Auditor's Office, its contracted examiners, or the Texas Attorney General's Office, and with regard to any federal funding, the VA, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts entered into by Provider shall reflect the requirements of this section.

7.04 REPORTS

Provider shall prepare and provide to the Board any operational information which the Board may request from time to time, including any information needed to assist the Board in complying with any reporting obligations or contractual requirements imposed by the VA or any other regulatory entity. In addition, Provider shall file Financial Reports in accordance with the following guidelines:

- (a) Within thirty (30) calendar days after the end of each calendar month, Provider shall provide the Board with an unaudited balance sheet and an unaudited statement of income and expenses for such month relating to the operation of the Veterans Cemetery, dated the last day of such month; and
- (b) Within one hundred fifty (150) calendar days after the end of the fiscal year of the Veterans Cemetery, Provider shall provide the Board with combined audited financial statements from an auditor acceptable to Board, including:
 - (i) a balance sheet of the Veterans Cemetery dated the last day of said fiscal year; and
 - (ii) a statement of income and expense for the year then ended relating to the operation of the Veterans Cemetery; and
 - (iii) a statement of cash flows for the year then ended for the Veterans Cemetery; and
 - (iv) audit adjustments reconciling audited annual financial statements to unaudited monthly financial statements previously provided by Provider.

The balance sheet and statement of income and expense shall include columns setting forth the applicable amounts for the prior fiscal year, comparing data reported pursuant to Section 7.04(b), above, to such prior year's data (if applicable) as well as to the budget developed for that same year. In this connection, all such reports shall be prepared on forms reasonably acceptable to the Board and Provider, and all statements and reports shall be prepared on an accrual basis, in accordance with GAAP, consistently applied. As additional support to reporting information required under this Contract, Provider shall, at the Board's request, provide to the Board, within five (5) working days of the Board's request, access to and/or copies of:

- (i) all bank statements and reconciliations; and
- (ii) detailed cash receipts and disbursement records; and
- (iii) general ledger listing; and
- (iv) summaries of adjusting journal entries; and
- (v) copies of all paid bills; and

- (vi) any other supporting documentation the Board may reasonably request within such reasonable time as not to impair the performance of Provider's functions under this Contract.

7.05 BOARD AUDIT RIGHTS

Provider and the Board recognize that Provider shall be subject to audits by various state and federal agencies, based on its duties of operating the Veterans Cemetery. Provider shall supply the Board with a copy of all audit reports, regardless of their source. Nothing herein shall limit the right of the Board to demand one (1) annual program and/or fiscal audit in accordance with GAAP of the Veterans Cemetery, using an independent third-party auditor selected by the Provider subject to review and approval by the Board which shall not be unreasonably withheld, the expense of which shall be borne by Provider. In addition, the Board shall have the right to perform an annual program and/or fiscal audit of any aspect of the operation of the Veterans Cemetery, using an auditor of the Board's choice. The costs associated with performing such special or targeted audits shall be the responsibility of the Board. Provider shall maintain such financial records and other records as may be prescribed by the Board or by applicable federal and state laws, rules, and regulations for a period of seven (7) years after final payment or until they are audited by the Board, whichever event occurs first. 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.

ARTICLE VIII. TERM AND COMPENSATION

8.01 TERM OF CONTRACT

This Contract shall be effective on February 5, 2024 ("Effective Date") and shall continue until **September 30, 2024** (the "Initial Term"), subject to the conditions set forth in this Contract. The parties may, upon mutual written agreement, renew the contract for four additional one-year terms unless terminated early under the terms and conditions of the Contract.

8.02 MANAGEMENT AND OPERATIONS FEE

As complete consideration for Provider's services under this Contract, including Provider's payment of all Operating Expenses, the Board shall, subject in all events to the availability of funds as set forth in **SECTIONS 8.04 AND 9.01(a)**, pay Provider's Fee for the Veterans Cemetery in accordance with **ATTACHMENT D**, attached hereto and incorporated herein for all purposes. Provider's Fee shall be paid to Provider by the Board on a monthly basis, consistent with the requirements of Chapter 2251, Subtitle F, of Title 10 of the Texas Government Code, "The Prompt Pay Act." For the purposes of the Prompt Pay Act, the Board's payment of the Provider's Fee is overdue on the thirty-first (31st) day after the date the Board receives a proper invoice for Provider's services under the Contract. For purposes of determining the relevant time period to calculate the Provider's Fee, "Day One (1)" for the Veterans Cemetery is the Effective Date. In the event that the Veterans Cemetery's Day One (1) is not on the first (1st) day of a month, the Operations Fee shall be prorated for the days in that month for which Provider provided services in the Veterans Cemetery. In accordance with the Prompt Pay Act, Provider shall pay any subcontractor under this Contract within ten (10) days after receipt of payment from the Board. **Requests for payment must prominently display "GLO**

Contract No. TBD Failure to include this information may result in a significant delay in payment.

8.03 INSPECTION AND WITHHOLDING OF OPERATIONS FEE

The Board's On-Site Representative shall conduct inspections, which may be announced or unannounced, at least once per quarter or more frequently if determined by the Board. Provider shall be scored in accordance with its compliance with the Board's Operating Manual and the Cemetery Inspection Checklist, attached hereto and incorporated herein for all purposes as **ATTACHMENT E**. To the extent the Board conducts an inspection within 30 days from a Force Majeure event Board will take into consideration the occurrence of such Force Majeure event in determining the Provider's compliance with the Board's Operating Manual and Cemetery Inspection Checklist. Provider must maintain a compliance score of ninety percent (90%) or higher. Provider shall be provided at least thirty (30) days from the date of the second inspection to achieve a compliance score of ninety percent (90%) and to remedy all cited deficiencies. Provider may request, in writing, a time period longer than thirty (30) days to achieve compliance which shall be subject to the Board or the Board's designee's written approval. The Board or the Board's designee's approval shall not be unreasonably withheld. If Provider cannot achieve compliance within this time period, the Board may elect to terminate this Contract for cause in accordance with **ARTICLE IX**.

If the Board elects to terminate this Contract for cause in accordance with **ARTICLE IX** for Provider's failure to achieve compliance, Provider shall reimburse the Board the amount of cost to bring the Veteran's Cemetery into compliance no later than the Contract's termination date.

8.04 OPERATIONS FEE ADJUSTMENT PROVISION

The Parties agree that the fees set forth on **ATTACHMENT D** are based in part upon certain estimates relating to costs of operation and projected burial rates, which are difficult to predict accurately over the term of the Contract. If any cost of operation materially changes (which must be objectively demonstrated), or actual burial rates exceed six hundred (600) in any rolling one (1) year period, Provider may request a review and adjustment of the fees set forth on **ATTACHMENT D**. The Board shall review Provider's request in good faith; however, notwithstanding the preceding sentence, the Board is not obligated to increase the Operations Fee set forth on **ATTACHMENT D**.

8.05 PASS THROUGH EXPENDITURES

The Board and Provider agree that the "pass-through expenditures" listed on **ATTACHMENT D** shall be the responsibility of the Board and not considered part of Provider's normal Operating Expenses. Provider shall promptly present the Board with invoices for all such expenses for reimbursement.

8.06 LIMITED OBLIGATION AGREEMENT

THIS CONTRACT IS A LIMITED OBLIGATION OF THE BOARD, AND ANY PAYMENT REQUIRED BY THE BOARD UNDER THIS CONTRACT SHALL BE LIMITED SOLELY TO THE CURRENT FUNDS RECEIVED BY THE BOARD FOR THE PAYMENT OF EXPENSES OF THE VETERANS CEMETERIES; NEITHER THE FAITH, CREDIT, TAXING POWER OF THE STATE OF TEXAS OR THE UNITED STATES OF AMERICA, NOR THE GENERAL REVENUES OF THE BOARD ARE PLEDGED TO MAKE ANY PAYMENT REQUIRED UNDER THIS CONTRACT.

8.07 MISCELLANEOUS SERVICES FEE

The Board and Provider agree that any “Miscellaneous Services” requested by the Board, as described under **ARTICLES V AND VI**, shall be the responsibility of the Board and are not considered part of Provider’s normal Operating Expenses. Provider shall promptly present the Board with invoices for all such expenses for reimbursement. The Board, however, shall not compensate Provider for any expenses exceeding Provider’s statement of work as approved by the Board.

ARTICLE IX. TERMINATION AND REMEDIES

9.01 TERMINATION

Either Party may terminate this Contract in the Event of Default by the other Party, or as otherwise specified in this Article IX. In the event of notice of termination or default, Provider will cooperate in the development of a Transition Plan for transitioning all aspects of facility operation from the current Provider to a new provider designated by the Board, with such transition occurring no later than one hundred twenty (120) days from the date of the receipt of notice. Any outstanding obligations shall be resolved in accordance with **SECTION 9.06**, “Winding Up.”

(a) State Termination for Non-appropriation

This Contract shall not be construed as creating any debt on behalf of the State in violation of Tex. Const. Art. III § 49. The continuation of this Contract beyond the current biennium may be subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Texas State Legislature, the Board’s excess lending profits and/or federal sources.

(b) Termination Without Cause by Board

The Board shall have the right to terminate this Contract without cause. Provider shall be provided with written notice no less than one hundred twenty (120) calendar days prior to the Board’s termination of this Contract. In the event that the Board exercises its rights to early termination under the provisions of this clause, such early termination shall be subject to the equitable settlement of the respective interests of the Parties, accrued up to the date of termination.

(c) Termination as Relief for Provider

Provider shall have the right to petition the Board for the termination of this Contract as relief from an unforeseen catastrophic natural or economic event, arising through no fault of Provider, that impairs the ability of Provider to perform its duties hereunder. Upon a finding that good cause exists for such termination, the Board shall terminate this Contract. Furthermore, if Provider, in fulfilling its obligations under this Contract, can objectively demonstrate to the Board that the Veterans Cemetery is operating at financial loss, Provider shall have the right to terminate this Contract. In the event that this Contract is terminated, such termination shall occur at the earlier of either:

- (i) one hundred and twenty (120) days following Provider’s petition to the Board for early termination; or

- (ii) the date upon which any catastrophic natural or economic event causes Provider to be no longer fiscally capable of carrying out the services required under this Contract.

9.02 PROVIDER EVENTS OF DEFAULT

With respect to Provider, it shall be an Event of Default hereunder for any of the following conditions:

(a) **Material Compliance**

If Provider fails to keep, observe, or perform any material agreement, term, or provision of this Contract for a period of thirty (30) calendar days after notice from the Board specifying the event or events of default. However, no Event of Default shall be deemed to exist where the act, event, or condition is one which by its nature or circumstances reasonably requires more than thirty (30) days to cure and Provider, promptly following receipt of the Board's notice, in good faith initiates and diligently pursues measures which, upon their conclusion, may reasonably be expected to cure or eliminate the noticed act, event, or condition;

(b) **Failure to Pay Third-party Providers**

If Provider fails to make payments or keep any covenants owing to any third party which would cause the Board to lose possession of the Veterans Cemetery or any personal property or service arrangements that are required to operate the Veterans Cemetery in the normal course of business;

(c) **Voluntary Insolvency occurs if Provider:**

- (i) ceases or fails to be solvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise; or
- (ii) voluntarily ceases to conduct its business in the ordinary course; or
- (iii) commences any Insolvency Proceeding with respect to itself; or
- (iv) takes any action to effectuate or authorize any of the foregoing;

(d) **Involuntary Insolvency occurs if Provider:**

- (i) has any involuntary Insolvency Proceeding commenced or filed against it, or if any writ, judgment, warrant of attachment, execution, or similar process is issued or levied against a substantial part of Provider's properties, and any such proceeding or petition is not dismissed; or such writ, judgment, warrant of attachment, execution, or similar process is not released, vacated, or fully bonded within sixty (60) days after commencement, filing, or levy; or
- (ii) admits the material allegations of a petition against it in any Insolvency Proceeding, or if an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or
- (iii) acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar person for itself, for a substantial portion of its property or business.

9.03 BOARD EVENTS OF DEFAULT

With respect to the Board, it shall be an Event of Default hereunder if the Board fails to keep, observe, or perform any material agreement, term, or provision of this Contract, including non-payment of Provider's Fee hereunder for any cause not specifically allowed herein, specifically, but without limitation, those causes outlined in Article VIII, and such default continues for a period of thirty (30) calendar days after notice is provided to the Board by Provider.

9.04 FORCE MAJEURE/NO DEFAULT

Any delays in or failure of performance by either party, except with regard to the obligation of payments under this Contract, shall not constitute an Event of Default hereunder if, and to the extent that, such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent Force Majeure. The party claiming Force Majeure shall promptly notify the other party in writing of the Force Majeure event 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 other party may terminate this Contract immediately upon written notification to the non-performing party.

9.05 REMEDIES UPON DEFAULT - PROVIDER/BOARD

If any Event of Default by either Party shall occur, either party, in addition to any other remedy at law available to it, may terminate this Contract in accordance with the terms herein, thereby releasing all Parties from any further continuing operational obligations whatsoever hereunder, provided the Parties shall cooperate in development of a Transition Plan. **NOTHING CONTAINED IN ANY PORTION OF THIS CONTRACT SHALL BE CONSTRUED IN ANY WAY TO WAIVE ANY DEFENSES ASSERTIBLE BY EITHER PARTY, INCLUDING SOVEREIGN IMMUNITY BY THE BOARD OR GOVERNMENTAL IMMUNITY BY THE PROVIDER.**

9.06 WINDING UP

In the event of termination of this Contract for any reason, the Parties shall perform the winding up tasks specified in this section. The Parties agree that the provisions of this section shall survive termination of this Contract and agree to undertake the following:

- (a) The Parties shall account for, and properly present to each other, all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set-off under this Contract; and
- (b) Provider shall account and present for inspection to the Board, no later than thirty (30) calendar dates from the date of termination, all Capital Equipment and Capital Improvements, and any damaged or missing Capital Equipment and/or Capital Improvements shall be the financial responsibility of Provider unless otherwise provided for herein; and
- (c) Provider shall return the Veterans Cemetery to the Board, equipped and in the same condition as it was provided to Provider, to ensure the continued operation

of the Veterans Cemetery, save and except for any damage that was caused by a natural catastrophic event through no fault of the Provider; and

- (d) Provider shall return all keys, access cards, and security codes to the Board; and
- (e) Provider shall satisfactorily complete work-in-progress at the contracted rate or as otherwise agreed, if so requested by the Board; and
- (f) Provider shall execute any documents and take any actions necessary to effectuate an assignment of this Contract, if so requested by the Board.

ARTICLE X. MISCELLANEOUS

10.01 CUMULATIVE RIGHTS AND REMEDIES; NO WAIVER

A right or remedy herein conferred upon or reserved to either Party hereto is not intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing, upon the occurrence of an Event of Default hereunder. The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Contract or to exercise any right or remedy as provided in this Contract shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Contract to the Parties hereof may be exercised from time-to-time and as often as may be deemed expedient by the Parties hereto.

10.02 WAIVER OF PRIVILEGE

The Parties agree that any applicable attorney-client or other legal privilege shall not be deemed waived by this Contract.

10.03 ASSIGNMENT

Provider may not, without the prior written consent of the Board, which consent may be withheld or granted in the Board's sole discretion, assign its obligations as Provider hereunder; or lease, assign, or sub-manage the Veterans Cemetery.

10.04 SEVERABILITY

In case any one or more of the provisions contained in this Contract should be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, but this Contract shall be reformed and construed and enforced to the maximum extent permitted by applicable law.

10.05 APPLICABLE LAW

This Contract shall be interpreted, construed, applied, and enforced in accordance with the laws of the State of Texas applicable to contracts between parties that are to be performed entirely within Texas, regardless of:

- (i) where this Contract is executed or delivered; or
- (ii) where any payment or other performance required by this Contract is made or required to be made; or

- (iii) where any breach of any provision of this Contract occurs, or any cause of action otherwise accrues; or
- (iv) where any action or other proceeding is instituted or pending; or
- (v) the nationality, citizenship, domicile, principal place of business, jurisdiction of organization, or domestication of any party; or
- (vi) whether the laws of the forum jurisdiction otherwise would apply the laws of a jurisdiction other than the State of Texas; or
- (vii) any combination of the foregoing.

NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE BOARD OR THE STATE OF TEXAS OR GOVERNMENTAL IMMUNITY BY THE PROVIDER.

10.06 DISPUTE RESOLUTION

If a 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, either party may require that the issue(s) be mediated. In such event, the requesting party shall notify the other, and a mediator acceptable to the Board and Provider will be selected. The mediation shall occur within thirty (30) days of the selection of a mediator. Prior to the mediation, each party will provide the mediator with a statement of issues to be mediated, along with any other information/releases required by the mediator. Costs of the mediation shall be borne equally by the Parties. This provision shall not apply to any matter with respect to which the Board or Provider may make a decision within its sole and complete discretion. Resolution of a dispute between Provider and any of its subcontractors, suppliers, or employees is the responsibility of Provider

10.07 CHOICE OF LAW AND VENUE

This Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit brought against the Board arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas. Except as otherwise provided by applicable law, the venue of any suit brought against Provider arising under this Contract is fixed in any court of competent jurisdiction in Bell County, Texas. Provider irrevocably waives any objection-including any objection to personal jurisdiction-it has or may have to the bringing of any action or proceeding in accordance with the foregoing, in respect of this Contract or any related document. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE BOARD OR THE STATE OF TEXAS OR A WAIVER OF GOVERNMENTAL IMMUNITY BY THE PROVIDER.**

10.08 CONFIDENTIALITY

If Provider receives a request or demand to disclose this Contract or any books, documents, or records relevant to this Contract for the purpose of an audit or investigation, Provider shall within two (2) business days after receipt of such request or demand, notify the Board in writing of the nature and scope of such request or demand, unless Provider is strictly prohibited from doing so as set forth in the terms of the audit,

investigation, or subpoena. Upon written request of the Board, Provider shall make available to the Board all such books, documents, or records.

To the extent permitted by law, Provider and the Board shall keep all information, in whatever form produced, prepared, observed, or received by Provider or the Board, confidential 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 Board; or (c) information that Provider or the Board is otherwise required to keep confidential by this Contract. Provider shall abide by the terms of the Board's Information Security Appendix as outlined in **Attachment F**.

The Board shall post this Contract to the GLO's website. Provider understands that the Board will comply with the Texas Public Information Act (Texas Government Code Chapter 552, the "PIA"), as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas (the "Attorney General"). Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the PIA. In accordance with Section 2252.907 of the Texas Government Code, Provider is required to make any information created or exchanged with the Board or the State of Texas pursuant to the Contract, and not otherwise excepted from disclosure under the PIA, available to the Board in portable document file (".pdf") format or any other format agreed upon between the Parties that is accessible by the public at no additional charge to the Board or the State of Texas. By failing to mark any information that Provider believes to be excepted from disclosure as "confidential" or a "trade secret," Provider waives any and all claims it may make against the Board for releasing such information without prior notice to Provider. The Attorney General will ultimately determine whether any information may be withheld from release under the PIA. Provider shall notify the GLO's Office of General Counsel within seventy-two (72) 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 a request for information was not written, Provider shall forward the third party's contact information to the above-designated e-mail address.

10.09 INDEMNITY

TO THE EXTENT PERMITTED UNDER THE LAW, EXCEPT FOR DAMAGES DIRECTLY OR PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OF THE BOARD, PROVIDER SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, THE BOARD, AND THE OFFICERS, REPRESENTATIVES, AGENTS, AND EMPLOYEES OF THE STATE OF TEXAS AND THE BOARD FROM ANY LOSSES, CLAIMS, SUITS, ACTIONS, DAMAGES, OR LIABILITY (INCLUDING ALL COSTS AND EXPENSES OF DEFENDING AGAINST ALL OF THE AFOREMENTIONED) ARISING IN CONNECTION WITH:

- a) THIS CONTRACT;**
- b) ANY NEGLIGENCE, ACT, OMISSION, OR MISCONDUCT IN THE PERFORMANCE OF THE SERVICES REFERENCED HEREIN; OR**
- c) ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER FEDERAL OR RECOVERABLE UNDER FEDERAL OR STATE WORKERS' COMPENSATION LAWS, THE TEXAS TORT CLAIMS ACT, OR ANY OTHER SUCH LAWS.**

PROVIDER SHALL BE RESPONSIBLE FOR THE SAFETY AND WELL-BEING OF ITS EMPLOYEES, CUSTOMERS, AND INVITEES. THESE REQUIREMENTS SHALL SURVIVE THE

TERM OF THIS CONTRACT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO THE BOARD. THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS CONTRACT.

10.10 LEGAL PROCEEDINGS

Provider shall, through its legal counsel, promptly coordinate all pertinent legal matters and proceedings with the Board's counsel, excluding any proceedings in front of the Equal Employment Opportunity Commission (the "EEOC"). As soon as practicable after Provider obtains actual knowledge thereof, Provider shall notify the Board in writing of all pending or threatened legal proceedings (other than those pending in front of the EEOC) affecting the Veterans Cemetery or the Board.

10.11 NOTICES

All notices required or permitted hereunder shall be given in writing by hand delivery; by registered or certified mail, postage prepaid; or by overnight delivery. Notice shall be delivered or mailed to the Parties at the following addresses or at such other places as either party shall designate in writing:

To Provider:

City Manager

City of Killeen

101 N. College Street

Killeen, Texas 76541

To the Board:

Dr. John Kelley, Director

Texas Veterans Land Board

Veterans Cemeteries Program

1700 North Congress

Austin, Texas 78701

With a copy to:

Texas General Land Office & Veterans Land Board
Office of General Counsel
P.O. Box 12873
Austin, Texas 78711-2873

10.12 ENTIRE AGREEMENT

This Contract contains the entire agreement between the Parties and supersedes all prior agreements and understandings, and shall be binding upon, and inure to the benefit of, their successors and assigns. This Contract may not be modified or amended except by written instrument signed by both of the Parties hereto.

10.13 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.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR GLO CONTRACT NO. TBD

IN WITNESS WHEREOF, the Parties hereby execute this Contract, to be effective as of Effective Date.

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

CITY OF KILLEEN, TEXAS

Mark A. Havens, Chief Clerk

Name: _____

Title: _____

Date of execution: _____

Date of execution: _____

OGC _____

VLB _____

DGC _____

VLBES _____

GC _____

DLC _____

ATTACHMENTS TO THIS CONTRACT:

- ATTACHMENT A:** Capital Assets and Improvements
- ATTACHMENT B:** Information Technology Equipment
- ATTACHMENT C:** General Affirmations
- ATTACHMENT D:** Management and Operations Fee and Budget
- ATTACHMENT E:** Cemetery Inspection Checklist
- ATTACHMENT F:** Information Security Appendix
- ATTACHMENT G:** Required Insurance