



## MANAGEMENT SERVICES CONTRACT GLO CONTRACT No. 17-405-000-A464

THE GENERAL LAND OFFICE (the “GLO”) and NGOgro, LLC, Tax Identification Number 47-2608270 (“Provider”), each a “Party” and collectively “the Parties,” enter into the following contract for management services in connection with operations at the Alamo and implementation of the Alamo Master Plan (as defined below) (the “Contract”) pursuant to Tex. Nat. Res. Code Chapter 31.

### I. DEFINITIONS / INTERPRETIVE PROVISIONS / PROJECT DESCRIPTION

#### 1.01 DEFINITIONS

“[ACM](#)” means Alamo Complex Management, a Texas non-profit corporation, its officers, employees and designees.

“[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 designees with the authority to audit and inspect include the GLO, the GLO’s contracted examiners, the State Auditor’s Office, the Texas Attorney General’s Office, and the Texas Comptroller of Public Accounts.

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

“[City](#)” means the City of San Antonio, its employees and designees.

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

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

“Endowment” means the Alamo Endowment, a Texas non-profit corporation, its officers, employees, and designees.

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

“GAAP” means “generally accepted accounting principles.”

“GASB” means the Governmental Accounting Standards Board.

“General Affirmations” means the statements in **Attachment 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.

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

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

“Master Plan” means the joint master plan developed by Preservation Design Partnership for the Alamo Plaza Historic District in San Antonio, Texas, and approved by the GLO, the City and the Endowment.

“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 management services, described in **SECTION 1.03** of this Contract.

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

“Provider” means NGOgro, LLC selected to accomplish the Project under this Contract.

“Provider's SOW” means the scope of work approved by Provider and the GLO Committee in **Attachment B**, attached hereto and incorporated herein for all purposes.

“[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**

- (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 B, Attachment A, Attachment C.

### **1.03 PROJECT**

Provider shall provide, or cause to be provided, services in connection with the management and operation of the Alamo and implementation of the Master Plan in accordance with this Contract and all Attachments, and the Provider's SOW, attached hereto and incorporated herein in its entirety for all purposes as **Attachment B** (collectively "The Project").

### **1.04 REPORTING REQUIREMENTS**

Provider shall submit monthly progress reports to the GLO. The reports shall begin one month after the Contract is executed and continue through the Contract Term. The reports shall indicate the current status of all phases of the Project, any problems and projected resolutions, and expected completion date.

In addition, Provider shall maintain regular contact with the GLO's and ACM's representatives through whatever combination of telephone or electronic means is necessary to keep the GLO and ACM fully apprised of the progress being made, or any obstacles encountered, in the course of the Project.

### **1.05 OFFICE SPACE**

During the Contract Term, office space may be made available in one of the buildings across from the Alamo complex owned by the State and managed by the GLO. In that event, the GLO may, at its sole discretion, allow Provider to use such office space free of charge during the Contract Term. Provider shall only be permitted to use such office space for matters relating directly to the Project. The office space shall be provided to Provider in its "as-is" condition and Provider shall be solely responsible for any damages to the office space or the common area in the building caused by Provider's officers, agents, employees, subcontractors or representatives. The Parties agree and acknowledge that GLO's provision of office space to Provider, and Provider's acceptance of said office space, shall not be construed as a lease between GLO and Provider and shall not create any landlord-tenant relationship.

The GLO may terminate Provider's use of the office space by giving three (3) days written notice. Provider's use of the office space shall terminate automatically upon the termination of this Contract.

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## **II. TERM**

### **2.01 DURATION**

This Contract shall be effective as of March 20, 2017 and shall terminate on September 30, 2017. The GLO, at its own discretion, may extend this Contract subject to terms and conditions mutually agreeable to both Parties.

### **2.02 EARLY TERMINATION**

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

### **2.03 ABANDONMENT OR DEFAULT**

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

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### **III. CONSIDERATION**

#### **3.01 CONTRACT LIMIT, FEES, AND EXPENSES**

Provider will be compensated in accordance with **Attachment B**.

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<sup>1</sup> 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](mailto:vendorinvoices@glo.texas.gov), with a copy to the GLO Deputy General Counsel at [jeff.gordon@glo.texas.gov](mailto:jeff.gordon@glo.texas.gov);
- (b) be supported by documentation that, in the judgment of the GLO, allows for full substantiation of the costs incurred; and
- (c) **prominently display "GLO Contract No. 17-405-000-A464"**

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

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

#### **IV. PROVIDER'S WARRANTY, AFFIRMATIONS, AND ASSURANCES**

##### **4.01 PERFORMANCE WARRANTY**

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

##### **4.02 GENERAL AFFIRMATIONS**

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

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**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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## VI. OWNERSHIP, INTELLECTUAL PROPERTY

### **6.01. OWNERSHIP AND INTELLECTUAL PROPERTY**

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

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

### **6.02 COPYRIGHT**

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

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

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

### **6.03 Publication**

Reports, publications, presentations, and all other materials produced by Provider with funding provided in whole or in part under this Contract shall carry on the front cover or title page of such items, appropriate acknowledgement of financial or other support by the GLO and, if applicable, all federal entities providing funds or other support for the Project.

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## VII. RECORDS, AUDIT, RETENTION, AND DISCLOSURE

### **7.01 BOOKS AND RECORDS**

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

### **7.02 INSPECTION AND AUDIT**

All records related to this Contract, including records of Provider and its Subcontractors, shall be subject to the Administrative and Audit Regulations. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Provider shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Provider and the requirement to cooperate is included in any subcontract it awards.

### **7.03 PERIOD OF RETENTION**

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 shall keep all information confidential, in whatever form produced, prepared, observed, or received by Provider or the GLO to the extent that such information is: (a) confidential by law; (b) marked or designated "confidential" (or words to that effect) by Provider or the GLO; or (c) information that Provider or the GLO is otherwise required to keep confidential by this Contract. Furthermore, Provider will not advertise that it

is doing business with the GLO, use this Contract as a marketing or sales tool, or make any press releases concerning Work under this Contract without the prior written consent of the GLO. Provider is allowed to list the GLO as a firm client on Provider's website and may highlight or promote GLO's activities at the Alamo through Provider's social media accounts.

#### **7.05 PUBLIC RECORDS**

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

#### **7.06 INFORMATION COMPILED UNDER MANAGEMENT SERVICES CONTRACT**

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

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## VIII. MISCELLANEOUS PROVISIONS

### 8.01 INSURANCE

Provider shall acquire for the duration of this Contract insurance with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount and in the form required by **Attachment 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

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

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

### 8.03 LEGAL OBLIGATIONS

Provider shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit,

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

#### **8.04 INDEMNITY**

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

#### **8.05 INFRINGEMENT**

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

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

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

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

#### **8.06 ASSIGNMENT AND SUBCONTRACTS**

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

#### **8.07 HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS) / MENTOR PROTÉGÉ**

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.

#### **8.08 RELATIONSHIP OF THE PARTIES**

Provider is associated with the GLO only for the purposes and to the extent specified in this Contract, and, in respect to Provider's performance pursuant to this Contract, Provider is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or

principal-agent, or to otherwise create for the GLO any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Provider or any other Party. Provider shall be solely responsible for, and the GLO shall have no obligation with respect to:

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

#### **8.09 COMPLIANCE WITH OTHER LAWS**

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

#### **8.10 NOTICES**

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

**GLO**

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

**Provider**

NGOgro, LLC  
7660 Overlook Hills Lane  
Cincinnati, OH 45244  
Attention: Douglass McDonald

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



## **8.11 GOVERNING LAW AND VENUE**

This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Provider irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.**

## **8.12 SEVERABILITY**

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

## **8.13 FORCE MAJEURE**

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

## **8.14 DISPUTE RESOLUTION**

If a contract dispute arises that cannot be resolved to the satisfaction of the Parties, either Party may notify the other Party in writing of the dispute. If the Parties are unable to satisfactorily resolve the dispute within fourteen (14) days of the written notification, the Parties must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve

the dispute. This provision shall not apply to any matter with respect to which either Party may make a decision within its respective sole discretion.

#### **8.15 ENTIRE CONTRACT AND MODIFICATION**

This Contract, its integrated Attachment(s), and any purchase order issued in conjunction with this Contract constitute the entire agreement of the Parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in such Attachment(s) and/or purchase order shall be harmonized with this Contract to the extent possible. Unless such integrated Attachment or purchase order specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language shall be construed consistently with the terms of this Contract. This Contract may only be amended in a writing executed by authorized representatives of the Parties.

#### **8.16 COUNTERPARTS**

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

#### **8.17 PROPER AUTHORITY**

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

#### **8.18 PREFERENCE FOR TEXAS PRODUCTS AND MATERIALS**

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

#### **8.19 SURVIVAL OF TERMS AND CONDITIONS**

The terms and conditions of this Contract related to the following subjects shall survive the termination of this Contract: definitions; interpretation; warranties; affirmations; prohibition on debts created on behalf of the State of Texas and/or the GLO; limitation of any Provider claim for damages to the amount of funds appropriated for payment but not yet paid to Provider; ownership; intellectual property; third-party reliance; books and records; inspection and audit; records retention period; confidentiality; public records; insurance; taxes; workers'

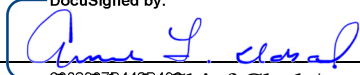
compensation; unemployment insurance; Provider's obligation to procure and maintain, at its sole expense, all government licenses, authorizations, insurance, waivers, permits, and/or qualifications necessary for Provider or any subcontractors to provide the goods or services described in this Contract; indemnity; assignment and subcontracting; relationship of the parties; compliance with laws; notices; governing law and venue; severability; dispute resolution; merger and integration; invoice and fee verification; property rights; default; and amendment.

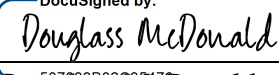
**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR GLO CONTRACT NO. 17-405-000-A464**

**GENERAL LAND OFFICE**


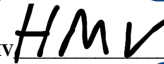


**NGOGRO, LLC**

DocuSigned by:  
  
Anne L. Idsal, Chief Clerk/  
Deputy Land Commissioner

DocuSigned by:  
  
Douglass McDonald  
Title: owner

Date of execution: 4/27/2017

Date of execution: 4/27/2017

OGC   
DIV   
DGC   
GC 

**ATTACHMENTS TO GLO CONTRACT NO. 17-405-000-A464:**

- ATTACHMENT A – GENERAL AFFIRMATIONS**
- ATTACHMENT B – PROVIDER’S SCOPE OF WORK**
- ATTACHMENT C – REQUIRED INSURANCE AND FORM**

**ATTACHMENTS FOLLOW**