

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

**CONTRACT FOR STATE USE PROGRAM**

**THIS AGREEMENT IS MADE** by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the State; the TIBH Industries, Inc., hereinafter called TIBH; and Woodcreek Outreach Rehabilitation Services, hereinafter called the Provider.

**WITNESSETH**

**WHEREAS**, Human Resources Code, Chapter 122, authorizes the State to purchase services and products from blind and severely disabled persons and establishes procedures for such purchases (hereinafter referred to as the State Use Program); and

**WHEREAS**, The Texas Workforce Commission on Purchasing from People with Disabilities has promulgated rules for the State Use Program at Texas Administrative Code - Title 40, Part 20, Chapter 806; and,

**WHEREAS**, pursuant to the rules, the State has determined to set aside a service generally described as Janitorial Services, Bay City TxDOT Office to be furnished by the Provider;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the State, TIBH, and the Provider mutually agree as follows.

**AGREEMENT**

**Article 1. Contract Period**

This contract becomes effective on August 1, 2017 and terminates on July 31, 2018 unless termination occurs as otherwise provided in this agreement.

**Article 2. Scope of Work**

The Provider shall undertake, perform, and complete all work authorized in Attachment A, Scope of Work, at locations and costs authorized in Attachment B, Work Location and Costs.

**Article 3. Compensation**

The maximum amount payable under this agreement shall not exceed \$ 10,846.37 unless this agreement is amended in accordance Article 10, Amendments.

The Provider shall submit periodic requests for reimbursement using forms acceptable to the State. Such requests will be made for work performed by the Provider. Compensation will be made in accordance with the rates established in Attachment B, Work Location and Costs.

The Provider hereby assigns all payments due it by the State to TIBH. The State shall make payment directly to TIBH on behalf of the Provider. No liability shall attach to the State by the Provider's assignment to TIBH. TIBH shall compensate the Provider in a timely manner commensurate with receipt of payment from the State.

**Article 4. Personnel, Equipment, and Material**

A. **Resources.** The Provider will provide adequate and sufficient personnel, equipment, and materials to perform the services required under the contract. The Provider certifies that it presently has adequate qualified personnel in its employment for performance of the services required under this contract, or it will be able to obtain such personnel.

The Provider will not employ personnel who have been convicted of a felony against another person in any area where the Provider's personnel could reasonably be expected to be alone with travelers, State employees, or any other persons not employed by the Provider.

- B. **Removal of Employees.** All employees assigned to this contract shall have such knowledge and experience as will enable them to perform the duties assigned to them. The State may instruct the Provider to remove any employee from association with work authorized in this contract if, in the sole opinion of the State, the work of that employee does not comply with the terms of this contract or if the conduct of that employee becomes detrimental to the work.

**Article 5. Inspection of Work**

The State will have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made on the premises of the Provider, the Provider shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations will be performed in such manner as will not unduly delay the work.

**Article 6. Public Safety and Convenience**

The safety of the public and the convenience of traffic are of prime importance under this agreement. Unless otherwise provided, the Provider's performance of this agreement shall not interfere with traffic on the roadway. Unless coordinated with the state, the Provider shall work only during daylight hours and no work will be performed on Sundays or State observed holidays.

**Article 7. Protection of Property**

The Provider shall take proper measures to protect all adjacent property, which might be damaged or injured by any process of work. In case of any such injury or damage resulting from the Provider's acts or omissions, the Provider shall restore at its own expense the damaged property to a condition similar or equal to that existing before such injury or damage was done, or shall otherwise remedy such injury or damage in a manner acceptable to the State, TIBH, and the property holder or owner involved. If the State must intervene and repair any damage not repaired by the Provider, all such repairs will be made at the Provider's expense. The State will deduct the costs associated with the repairs from the amount due and payable to the Provider, or the Provider will otherwise compensate the State for the cost of repairs.

**Article 8. Subcontracts**

The Provider shall not sublet or transfer any portion of the work authorized in this contract unless specifically authorized to do so in writing by the State. Subcontractors shall comply with the provisions of this contract. No subcontract will relieve the Provider of its responsibility under this contract.

No later than ten (10) days after receiving payment from the State, the Provider shall pay all sub-providers for work performed under a subcontract authorized hereunder. The State may withhold all payments that have or may become due if the Provider fails to comply with the ten-day payment requirement. The State may also suspend the work under this contract until sub-providers are paid. This requirement also applies to all lower tier sub-providers, and this provision must be incorporated into all subcontracts.

**Article 9. Changes in Work**

If at any time during the course of this agreement it becomes necessary for the Provider to perform services not identified in the original Attachment A, Scope of Work, or for the State to make changes to the services, the State will amend the contract in accordance with Article 10, Amendments. No compensation will be paid if the Provider performs the additional or changed services before this amendment is executed.

If the maximum amount payable established in Article 3, Compensation, will be exceeded as a result of the additional or changed work, the State will provide additional compensation at the rates specified in Attachment B, Work Location and Cost. If rates have not been specified for the additional work tasks, the

State, the Provider, and TIBH will mutually agree to the rates, provided, however, that rates are reasonable and consistent with rates normally charged for the work.

Any additional compensation must be authorized in writing and approved by all parties in accordance with Article 10, Amendments.

If at any time during the course of this agreement it becomes necessary for the State to cancel the services authorized in Attachment A, Scope of Work, the State will so notify the Provider in writing and the Provider will cancel the work as instructed by the State. Provider shall not request compensation for any cancelled work.

#### **Article 10. Amendments**

If the Provider finds that any work requested under this agreement will change the scope, character, complexity, or nature of the work, the time period, the method of payment, or the maximum cost hereunder a written amendment must be executed within the time period established in Article 1, Contract Period.

If the State finds it necessary to require changes in completed work because of errors made by the Provider, the State will require the Provider to correct the work at no cost to the State and without an amendment to the agreement.

#### **Article 11. Insurance**

If the Provider is a State agency, by signing this agreement, it certifies it is self-insured.

If the Provider is not a State agency, it must provide the State with evidence of insurance coverage in accordance with TxDOT Form 1560, "Certificate of Insurance" before beginning work. The terms and conditions of the certificate are incorporated herein by reference. The Provider, by contract, shall require its sub-provider(s) to secure a policy of insurance with the same coverage as Form 1560, naming the State as an additional insured under its terms.

#### **Article 12. Buy Texas**

The Provider shall buy Texas products and materials for use in providing the services authorized in this contract when these products and materials are available at a comparable price and in a comparable period of time to products and materials produced outside this state. When requested by the State, the Provider shall furnish documentation of these purchases or a description of good faith efforts to do so.

#### **Article 13. Reporting**

The Provider or TIBH shall promptly advise the State in writing of events which have a significant impact upon the work performed under this agreement, including:

- A. Problems, delays, or adverse conditions which will materially affect the Provider's ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accomplished by a statement of the action taken or contemplated and any State or TIBH assistance needed to resolve the situation.
- B. Favorable developments or events that enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

#### **Article 14. Gratuities**

- A. **Employees Not to Benefit.** Texas Transportation Commission policy mandates that employees of the Texas Department of Transportation shall not accept any benefit, gift or favor from any person doing business with or who reasonably speaking may do business with the State under this contract. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of the Executive Director of the Texas Department of Transportation.
- B. **Liability.** Any person doing business with or who reasonably speaking may do business with the State under this contract may not make any offer of benefits, gifts or favors to department employees, except as

mentioned above. Failure on the part of the Provider and TIBH to adhere to this policy may result in the termination of this contract.

#### **Article 15. Indemnification**

- A. **Provider.** If the Provider is a State Agency, the Provider acknowledges that it is responsible for its own acts and deeds and the acts and deeds of its agents and employees. If the Provider is not a State agency, then the Provider agrees to indemnify and save harmless the State and its officers and employees from all claims and liability due to activities of itself, its agents, or employees, performed under this contract and which are caused by or result from error, omission, or negligent act of the Provider or of any person employed by the Provider. The Provider shall also indemnify and save harmless the State from any and all expense, including, but not limited to, attorney fees which may be incurred by the State in litigation or otherwise resisting said claim or liabilities which may be imposed on the State as a result of such activities by the Provider or its employees. The Provider further agrees to indemnify and save harmless the State from and against all claims, demands, and causes of action of every kind and character brought by any employee of the Provider against the State due to personal injuries and/or death to such employee resulting from any alleged negligent act by either commission or omission on the part of the Provider.
- B. **TIBH.** TIBH agrees to indemnify and save harmless the State and its officers and employees from all claims and liability due to activities of itself, its agents, or employees, performed under this contract and which are caused by or result from error, omission, or negligent act of TIBH or of any person employed by TIBH. TIBH shall also indemnify and save harmless the State from any and all expense, including, but not limited to, attorney fees which may be incurred by the State in litigation or otherwise resisting said claim or liabilities which may be imposed on the State as a result of such activities by TIBH or its employees. TIBH further agrees to indemnify and save harmless the State from and against all claims, demands, and causes of action of every kind and character brought by any employee of TIBH against the State due to personal injuries and/or death to such employee resulting from any alleged negligent act by either commission or omission on the part of the Provider.

#### **Article 16. Records**

- A. The Provider and TIBH agree to maintain all books, papers, drawings, accounting records, and evidence pertaining to costs incurred and work performed hereunder, hereinafter called the records, and shall make such records available at its office during the contract period and for four (4) years from the date of final payment under this contract.

The Provider and TIBH shall allow access to the records by duly authorized representatives of the State for the purpose of making audits, examinations, excerpts, and transactions.

- B. 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 this 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. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

#### **Article 17. Conflict of Interest**

- A. The undersigned represents that its company has no conflict of interest that would in any way interfere with its or its employees' performance of services for the department or which in any way conflicts with the interests of the department. The Provider shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the department's interests.
- B. Submit a notarized Form 1295, "Certificate of Interested Parties," in the following instances:
- o at contract execution for contracts with an award amount of \$1,000,000 or more;

- at any time an existing contract increases in value to \$1,000,000 or more due to changes in the contract;
- at any time there is an increase of \$1,000,000 or more to an existing contract (supplemental agreement, extensions, and renewals); or
- at any time there is a change to the information in Form 1295, when the form was filed for an existing contract.

Form 1295 and instructions on completing and filing the form are available on the Texas Ethics Commission website.

**Article 18. Termination**

This agreement may be terminated before the completion date established in Article 1, Contract Period, by any of the following:

- A. By mutual consent and agreement of both parties hereto.
- B. By the State, giving notice in writing to the Provider and TIBH, as a consequence of failure by the Provider or TIBH to perform the services herein set forth in a satisfactory manner and within the limits provided, with proper allowances being made for circumstances beyond the control of the Provider and TIBH.
- C. By either party upon the failure of the other party to fulfill its obligations as set forth in the Scope of Work attached hereto and labeled Attachment A, giving written notice one to the other establishing the effective date of termination.
- D. By satisfactory completion of all services and obligations described herein.

If the State should terminate this agreement, then no costs other than costs due and payable at the time of termination shall thereafter be paid to the Provider or TIBH. In determining the value of the work performed by the Provider prior to termination, the State will consult with TIBH, but the State shall be the sole judge. Payment for eligible costs incurred pursuant to a notice of termination will be based on work completed at that time.

If the Provider defaults in performance of this agreement or if the State terminates the agreement for fault on the part of the Provider or TIBH, in determining payment, the State will give consideration to the actual services or products provided up to the date of default, the costs to the State of employing another firm to complete the required work and the time required to do so, and other factors which affect the value to the State of the work performed at the time of default.

**Article 19. Disputes**

If a dispute arises about the services authorized under this agreement, the Provider shall immediately notify the State and TIBH. Every effort shall be made to resolve the dispute.

If, however, the dispute cannot be settled in an amount of time deemed reasonable by the State, the State will terminate this agreement in accordance with Article 18, Termination. If the State enters into a contract with a new Provider because the dispute with the original Provider could not be settled in an amount of time deemed reasonable by the State, then the original Provider will have access to all remedies existing at law and in equity. TIBH will coordinate with the State to furnish another Provider under the State Use Program, and a new agreement will be entered into for the services or products set aside under the terms of this agreement.

If another Provider cannot be found to provide the services, TIBH will notify the State in writing no later than thirty (30) days from the date of termination of this agreement. Upon receiving such notice the State shall at its own option complete the work with its own forces or enter into a contract using appropriate procedures other than the State Use Program. The work will then be removed from the State Use Program.

**Article 20. Remedies**

Violations or breach of the terms of this agreement by the Provider or TIBH shall be grounds for termination of the contract. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed by either party and shall be cumulative.

**Article 21. Compliance with Laws**

The parties shall comply with all applicable federal, State, and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this contract, including, without limitation, worker's compensation laws, minimum and maximum salary wage statutes and regulations, licensing laws and regulation, and nondiscrimination laws. When required, the parties shall furnish each other with satisfactory proof of compliance.

**Article 22. Successors and Assigns**

The State, TIBH, and Provider do each hereby bind themselves, their successors, executors, administrators and assigns to each other party of this agreement and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this contract.

**Article 23. Notices**

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:

**State:** Texas Department of Transportation  
403 Huck Street  
Yoakum TX 77995  
361/293-4300

**TIBH:** Rosa Valdez  
5262 S Staples Suite 240  
Corpus Christi TX 78411  
361/985-8899

**Provider:** Woodcreek Outreach Rehabilitation Services  
P O Box 6103  
Huntsville TX 77342  
936/661-0405

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

**Article 24. Debarment Certification**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the TIBH and Provider certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

Article 26. Signatory Warranty

The undersigned signatories each hereby represent and warrant that each is an officer of the organization for which he or she has executed this contract and that each has a full and complete authority to enter into this agreement on behalf of the agency.

IN WITNESS WHEREOF, the parties hereto have executed triplicate counterparts to effectuate their agreement, but this agreement shall not be valid until signed by a duly authorized representative of each party.

THE PROVIDER

Signature [Handwritten Signature] Date 7/24/17  
Title President Phone (936) 661-0405  
Address P O Box 6103, Huntsville TX 77342  
Type/Printed Name Ed De La Garza, President

THE STATE OF TEXAS

Executed for the Executive Director and approved by the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

Signature [Handwritten Signature] Date 7/24/17  
Title District Engineer Phone 361/293-4300  
Address 403 Huck Street, Yoakum TX 77995  
Type/Printed Name and Title Paul E. Reitz, P.E., District Engineer

TIBH INDUSTRIES, INC

Signature [Handwritten Signature] Date 7-24-17  
Title Regional Marketing Manager Phone (361) 985-8899  
Address 5262 S Staples, Suite 240, Corpus Christi, Texas 78414  
Type/Printed Name Rosa M. Valdez, Regional Marketing Manager

ATTACHMENT A  
SCOPE OF WORK

**Texas Department of Transportation  
Janitorial Maintenance Specification**

1. **Description.** Provide weekly, monthly, and periodic janitorial services at the TxDOT office located on **500 Avenue F, Bay City Texas.**
2. **Materials.** Furnish all approved cleaning supplies, tools, equipment, and transportation to efficiently produce the desired results. The Department will furnish the following disposable supplies: hand towels, toilet tissue, hand soap, trash bags, and deodorants.

The Department will provide one storage area for storage of the Provider's equipment and supplies. Keep the area in a clean and orderly condition. The Department will not be responsible for the Provider's equipment and supplies stored in the storage area. Label and store all bottles and containers to comply with all local, state and federal hazardous materials regulations, and all Department policies and procedures regarding the safe management of hazardous materials. Furnish Material Safety Data Sheets (MSDS) on products provided by the Provider.

3. **Equipment.** Furnish all equipment and tools, including vacuum cleaner and buffer.
4. **Work Methods.**
  - A. **Weekly Services. (All areas on attached drawing(s) are to be cleaned weekly.)**
    1. Sweep, dust mop, or vacuum all floors. Sweep entrance areas, porches, thresholds, steps, and walks adjacent to building. Damp mop all tile floors. Keep corners and edges, and areas free of visible dust. Clean outdoor mats. The Department will replace mats as needed.
    2. Dust all office furniture, equipment, air vents, and pictures. Wipe clean desks, tabletops, and drafting tables provided no business material is laying on such.
    3. Wipe clean cabinet tops, table tops, chairs, countertops, top of refrigerator and microwave in the break room and conference room.
    4. Empty wastebaskets and cigarette disposal units into trash receptacles located at various assigned locations of the complex. Do not combine trash from regular wastebaskets with the paper in the recycle wastebaskets. Empty pencil sharpeners as needed.



5. Remove fingerprints from doors, door glass, door handles, woodwork, and clean plate-glass windows and mirrors.
6. Clean and sanitize drinking fountains.
7. Clean and disinfect all restrooms including all fixtures, stall walls, doors, and mirrors (includes any restroom located outside the main building).
8. Refill towel, tissue, and soap dispensers, as needed.
9. Dust tops of partitions, ledges, doors, door sashes, window sashes, and picture moldings.
10. Clean all glass doors and glass partitions with glass cleaner inside and outside.

**B. Monthly Services.**

1. Polish and buff all tile floors.
2. Dust all furniture and desk accessories after buffing floors
3. Clean walls and partitions to remove dirt and fingerprints.
4. Dust and spot clean blinds.
5. Dust and spot clean light fixtures. Dust ceilings and air vents.
6. Clean door panels and air vents.
7. Vacuum all chairs.
8. Sweep porch, ceilings, corners and walls free of spider webs, etc.

**C. Periodic Services.**

1. **Window Cleaning.** Wash the inside and outside of all windows thoroughly 1 time per year. (Advance notice is required.)
2. **Strip/Wax Tile Floors.** Strip and wax all tile floors 2 times per year. Use Johnson's Complete Wax or wax of equal quality. Move and replace all equipment and furnishings necessary to accomplish this service. Remove wax from walls and baseboards. (Advanced notice is required.)

**D. Methods of Operation.**

1. Complete weekly, monthly, and periodic checklists for all cleaning services. Review the checklists to ensure full compliance with the provisions of the contract and sign the payment paperwork once each week. The checklists will be available for initial review by the Provider at the pre-work meeting.
2. Provide and enforce the use of personal safety protective clothing, footwear, eyewear, and any other safety materials needed to perform the work in a safe and orderly manner.

3. Report in writing any needed repairs that are observed during the performance of services.
4. Leave all "lost and found" items in designated area or with Department personnel.
5. Repair, at Provider's expense, any damage to Department property caused by the Provider through the Provider's negligence, equipment or employees.
6. Discuss all questions and problems concerning work performed with Department personnel.

**E. Work Hours.**

Perform work on Mondays during the hours mutually agreed upon by the Department and the Provider. Saturday and Sunday hours are flexible and may be used for stripping and waxing tile floors.

Do not perform any services in work areas where Department personnel are still working until they vacate the work area or grant permission to do so.

No visitor's spouses, children, or friends of the Provider's employees will be allowed in the buildings or on the grounds during work hours, unless they are bona fide employees of the Provider.

**5. Measurement.** This Item will be measured as follows:

- A. Janitorial Services (Weekly).** By the cycle.
- B. Janitorial Services (Monthly).** By the month.
- C. Janitorial Services (Periodic).**
  1. Window Washing. By the cycle.
  2. Strip/Wax Tile Floors. By the cycle.

**6. Payment.** The work performed and the supplies furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for Janitorial Service (Weekly and Monthly); Janitorial Service Periodic Window Washing, and Strip/Wax Tile Floors. This price shall be full compensation for furnishing all labor, supplies, equipment, and incidentals. When janitorial services required for the weekly cycle or monthly service are not satisfactorily completed, the unit bid price for that service shall be deducted from the Provider's weekly /monthly payment.

**ATTACHMENT B  
WORK LOCATION AND COSTS**

**I. BASIS FOR CALCULATING REIMBURSABLE COSTS:**

Janitorial services for the Texas Department of Transportation office building (approximately 1561 SF) located at **500 Avenue F, Bay City Texas at 979/245-8338.**

Janitorial Services (weekly service) = 52 cycles X \$120.00 = \$6,240.00

Janitorial Services (monthly service) = 12 months X \$243.41 = \$2,920.92

Window Washing 1 cycles X \$198.29 = \$198.29

Strip/Wax Tile Floors 2 cycles X \$743.58 = \$1,487.16

Total \$10,846.37

**II. PAYMENT FOR SERVICES:**

**TxDOT** shall pay for services satisfactorily performed weekly and monthly during the preceding month.

One weekly cycle/monthly payment will be deducted for any day when all janitorial services are not satisfactorily completed.