

SOLICITATION, OFFER AND AWARD

1. CONTRACT NO. 696-AG-19-19-C056	2. SOLICITATION NO. 696-AG-19-B017	3. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFO) <input type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED March 18, 2019
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SOLICITATION

5. Sealed bids will be received by the Department until 3:00 p.m. local time on Monday, April 8, 2019 , and submitted to: Attention: 696-AG-19-B017 Texas Department of Criminal Justice Contracts and Procurement Department Client Services and Governmental Contracts Branch Two Financial Plaza, Suite 525 Huntsville, Texas 77340	6. FOR INFORMATION CONTACT: Steven Tilley, CTPM, CTCM Contract Specialist PHONE: (936) 437-7115 FAX: (325) 223-0310 E-MAIL: steven.tilley@tdcj.state.gov
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BID (Must be fully completed by Bidder)

7. DISCOUNT FOR PROMPT PAYMENT: → <i>None</i>	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	__ CALENDAR DAYS %
8. ACKNOWLEDGMENT OF AMENDMENTS: <i>(The bidder acknowledges receipt of amendments to the SOLICITATION for Bidders and related documents numbered and dated:</i>	AMENDMENT NO. <i>A-001</i>	DATE <i>3-22-19</i>	AMENDMENT NO.	DATE
9. NAME AND ADDRESS OF BIDDER: → <i>Carroll Flying Service</i> <i>2111 County Road 33</i> <i>Danbury, TX 77534</i>	10. NAME AND TITLE OF AUTHORIZED TO SIGN BID (Type or Print) <i>David Andrew Christian</i> <i>Prof Christian</i>			
11. TELEPHONE NO. (Include area code) <i>(979) 922 8623</i>	12. SIGNATURE (See Block 10)		13. BID DATE <i>4-3-19</i>	

TO BE COMPLETED AT TIME OF AWARD

Document Type: 2S This award consummates the contract which consists of the following documents: (a) the State's solicitation and solicitation amendments and (b) this award. The total funding for the Base Period of this Contract (May 8, 2019 through August 31, 2019) shall not exceed \$25,000.00	Texas Department of Criminal Justice By: Title: Chief Financial Officer Date: <u>5/10/19</u>
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SECTION A - DEFINITIONS

The following terms used in this Contract will, unless the context indicates otherwise, have the meanings set forth below:

Authorized Representative means the person designated in writing to act for and on behalf of a party of this Contract, which designation has been furnished to the other party hereto as described in Section G.2.1.

Biennium means any of the two-year periods beginning on September 1 and ending on August 31 of odd numbered years, which periods are used for budgetary purposes by the State of Texas.

Commencement Date means the date on which the Contractor shall begin providing services. For the purpose of this Contract, that date is May 8, 2019.

Contract Term means the duration of this Contract as specified in Section F.1.

Contractor means the individual, partnership or corporation who performs services under this Contract.

Department means The Texas Department of Criminal Justice (TDCJ).

Department Policy/Policies means all written policies, procedures, standards, guidelines, directives and manuals of the Department and as may be amended from time to time, which the Department has made available to the Contractor and with which the Contractor has an affirmative obligation to be and remain familiar.

Event of Default means any of the events or circumstances described in Section I.3.

Fiscal Year means any of the one (1) year periods beginning September 1 and ending August 31, which periods are used for annual budgetary purposes by the State of Texas.

Non-Appropriation means the failure by the Legislature of the State, as part of its budgetary process, to appropriate money to be used for the payments due hereunder.

Offender means a person under the supervision of the Texas Department of Criminal Justice.

Payment or Payments means the amount(s) agreed to be paid by the Department to the Contractor for Services under this Contract.

PD means the Texas Department of Criminal Justice's Personnel Directives.

Program Administrator(s) means the Department employee(s) that is/are responsible for technical administration of this Contract. See Section G.2.3 for full explanation.

Services means performance by the Contractor providing aerial spraying services in accordance with the terms and conditions listed herein.

TBCJ means the Texas Board of Criminal Justice.

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 SERVICES AND PRICES/COSTS

B.1.1 Services Being Acquired

The Contractor shall, in accordance with the terms of this Contract, provide all necessary personnel and Services and otherwise do all things necessary for, or incidental to, providing the aerial spraying Service(s) listed hereunder.

B.2 PRICING SCHEDULE

B.2.1 Application to Southern Area Farms

Contract Line Item Number (CLIN) 001, Sub-Categories A-F and CLIN 002, Sub-Categories A-C

The Department contemplates the use of aircraft service during the 2019-2020 cropping season for approximately (1) zero to 3,500 acres of cotton; (2) zero to 14,000 acres of corn and grain sorghum; and (3) zero to 3,700 acres of vegetables. The number of applications will be determined by weed and/or insect infestations. The Contractor shall be aware that the Department uses state-owned ground rigs to the fullest extent possible. The Department's Southern Area Farms are:

Clemens Farm, Brazoria County, Brazoria, Texas
 Darrington Farm, Brazoria County, Rosharon, Texas
 Ramsey Farm, Brazoria County, Rosharon, Texas
 Scott Farm, Brazoria County, Angleton Texas

001 - Category I – Liquid Application of Insecticides, Herbicides, Fungicides, Fertilizers, and/or Defoliant

001A	1 Gallon Total Liquid	\$ <u>7.50</u> Per Acre Application
001B	2 Gallons Total Liquid	\$ <u>8.00</u> Per Acre Application
001C	3 Gallons Total Liquid	\$ <u>9.00</u> Per Acre Application
001D	5 Gallons Total Liquid	\$ <u>10.00</u> Per Acre Application
001E	10 Gallons Total Liquid	\$ <u>12.00</u> Per Acre Application
001F	Ultra Low Volume (ULV)	\$ <u>7.25</u> Per Acre Application

002 – Category II – Application of Granular Fertilizer

The Department contemplates the use of aerial application of granular fertilizer at various rates per acre to approximately zero to 6,700 acres of various croplands.

002A	100 – 150 pounds per acre	\$ <u>13.25</u> Per Acre Application
002B	151 – 200 pounds per acre	\$ <u>16.50</u> Per Acre Application
002C	201 – 250 pounds per acre	\$ <u>20.00</u> Per Acre Application

B.2.2 Applications to Pack/Luther Unit, Grimes County, Navasota, Texas and Buffalo Ranch, Burleson County, Snook, Texas

CLIN 003, Sub-Categories A-E and CLIN 004 A-C

The Department contemplates the use of aircraft service during the cropping season of 2019-2020 for approximately (1) zero to 2,500 acres of grain sorghum; (2) zero to 5,500 acres of corn; (3) zero to 650 acres of vegetables; and (4) zero to 2,700 acres of cotton. The number of applications will be determined by weed and insect infestation.

003 - Category III - Liquid Pesticide Application

003A	1 gallon total liquid	<u>N/A</u> Per Acre Application
003B	2 gallons total liquid	<u>N/A</u> Per Acre Application
003C	3 gallons total liquid	<u>N/A</u> Per Acre Application
003D	5 gallons total liquid	<u>N/A</u> Per Acre Application
003E	Ultra Low Volume (ULV)	<u>N/A</u> Per Acre Application

The Department contemplates the use of aerial applications of granular fertilizer at various rates per acre to approximately zero to 1,800 acres of various croplands.

004 - Category IV - Granular Fertilizer Application

004A	100 - 150 pounds per acre	<u>N/A</u> Per Acre Application
004B	151 - 200 pounds per acre	<u>N/A</u> Per Acre Application
004C	201 - 250 pounds per acre	<u>N/A</u> Per Acre Application

B.2.3 Application to Central Area Farms

CLIN 005, Sub-Categories A-E and CLIN 006 Sub-Categories A-C

The Department contemplates the use of aircraft service during the cropping season of 2019-2020 for approximately (1) zero to 1,400 acres of cotton; (2) zero to 2,600 acres of corn and grain sorghum; and (3) zero to 7,500 acres of pastureland. The number of applications will be determined by weed and insect infestations. The Department's central area farms are:

Eastham Farm, Houston County, Love Lady, Texas
 Ellis/Estelle Farm, Walker County, Huntsville, Texas
 Ferguson Farm, Madison County, Midway, Texas

005 - Category V - Liquid Application of Insecticides, Herbicides, Fungicides, Fertilizers, and Defoliant

005A	1 gallon total liquid	<u>N/A</u> Per Acre Application
005B	2 gallons total liquid	<u>N/A</u> Per Acre Application
005C	3 gallons total liquid	<u>N/A</u> Per Acre Application
005D	5 gallons total liquid	<u>N/A</u> Per Acre Application
005E	Ultra Low Volume (ULV)	<u>N/A</u> Per Acre Application

The Department contemplates the use of aerial application of granular fertilizer at various rates per acre to approximately zero to 6,000 acres of various croplands.

006 - Category VI - Granular Fertilizer Application

006A	100 - 150 pounds per acre	<u>N/A</u> Per Acre Application
006B	151 - 200 pounds per acre	<u>N/A</u> Per Acre Application
006C	201 - 250 pounds per acre	<u>N/A</u> Per Acre Application

B.2.4 Application to Northern Area Farms

CLIN 007, Sub-Categories A-E; CLIN 008, Sub-Categories A-C; and CLIN 009

The Department contemplates the use of aircraft service during the cropping season of 2019 – 2020 for approximately zero to 1,550 acres of grain sorghum and corn. The units are adjacent and use a common landing strip located on the Coffield Farm.

Beto Farm, Anderson County, Tennessee Colony, Texas
 Coffield Farm, Anderson County, Tennessee Colony, Texas

007 - Category VII - Liquid Application of Insecticides, Herbicides, Fungicides, and Fertilizers to Coffield and Beto Farms

007A	1 gallon total liquid	<u>N/A</u> Per Acre Application
007B	2 gallons total liquid	<u>N/A</u> Per Acre Application
007C	3 gallons total liquid	<u>N/A</u> Per Acre Application
007D	5 gallons total liquid	<u>N/A</u> Per Acre Application
007E	Ultra Low Volume (ULV)	<u>N/A</u> Per Acre Application

CLIN 008, Sub-Categories A-C and 010

The Department contemplates the use of aerial application of granular fertilizer at various rates per acre to approximately zero to 3,000 acres on the Coffield and Beto Farms.

008 - Category IX - Granular Fertilizer Application for Coffield and Beto Farms (Northern Farms)

008A	100 - 150 pounds per acre	<u>N/A</u> Per Acre Application
008B	151 - 200 pounds per acre	<u>N/A</u> Per Acre Application
008C	201 - 250 pounds per acre	<u>N/A</u> Per Acre Application

The Department contemplates the use of aerial service for seeding a sorghum-sudan hybrid to approximately zero to 1,400 acres at a seeding rate of 15 pounds per acre on the Northern Area Farms. This seeding should take place during mid to late April.

009 - Category X - Seeding Forage Sorghum on Northern Area Farms

009	Seeding forage sorghum	<u>N/A</u> Per Acre Application
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B.2.5 Application to Northern & Central Area Farms

The Department contemplates the use of aircraft service for applications of regulated herbicides and picloram to approximately (1) zero to 8,500 acres on the Coffield and Beto Farm; and (2) zero to 5,000 acres on the Eastham Farm. Aerial applicators bidding on this Contract must be bonded and registered for topical application of hormone type herbicides or plant regulators with the Texas Department of Agriculture (TDA). The TDA does not deduct acres treated from the Contractor's permits, but does require a report of acres flown. Therefore, do not include the cost of the permit acres because state-owned land is being treated.

Coffield and Beto Farms are located in Anderson County, Tennessee Colony, Texas. This county is non-regulated. The Eastham Unit is in the regulated portion of Houston County. There will be cotton planted on the Department land directly across the river from the Eastham Unit.

010 - Category VIII - Liquid Application of Regulated Herbicides and Picloram to Coffield, Beto, and Eastham Units (Application is at 5 gallons total liquid per acre)

010A	Coffield and Beto	<u>N/A</u> Per Acre Application
010B	Eastham	<u>N/A</u> Per Acre Application

Height of application will be below treetop level while spraying forest right-of-way where possible. All decisions concerning height of flight, rates, and cancellation of spraying due to environmental conditions will be final. All applications will be made under direct supervision of either the Department's Farm Manager or the Manager of Livestock for the specified unit.

B.2.6 Application to All Units

The following four (4) categories contain application requirements which are common to all units:

CLIN 011, Sub-Categories A-D, CLIN 012, Sub-Categories A-D, CLIN 013, Sub-Categories A-D and CLIN 014, Sub-Categories A-D

The Department contemplates the use of aerial service for seeding rye grass to approximately (1) zero to 2,000 acres on Coffield - Beto (Northern); (2) zero to 3,000 acres on Ellis/Estelle, Ferguson, Eastham (Central); (3) zero to 1,200 acres on Darrington, Ramsey, Scott and Clemens (Southern); and (4) zero to 400 acres on Pack/Luther. This is a total of 6,600 acres throughout the system. Seeding rate will be 10, 15, 20 or 25 pounds per acre. In most cases the acreage on these farms will not be one large block; there may be several smaller fields. Swath will be a maximum of 45 feet. The Contractor must supply ground-loading equipment.

011 - Category XI - Seeding Rye Grass

011A	Northern Area Farms - 10 pounds per acre	<u>N/A</u> Per Acre
	Northern Area Farms - 15 pounds per acre	<u>N/A</u> Per Acre
	Northern Area Farms - 20 pounds per acre	<u>N/A</u> Per Acre
	Northern Area Farms - 25 pounds per acre	<u>N/A</u> Per Acre
011B	Central Area Farms - 10 pounds per acre	<u>N/A</u> Per Acre
	Central Area Farms - 15 pounds per acre	<u>N/A</u> Per Acre
	Central Area Farms - 20 pounds per acre	<u>N/A</u> Per Acre
	Central Area Farms - 25 pounds per acre	<u>N/A</u> Per Acre
011C	Southern Area Farms - 10 pounds per acre	<u>\$10.00</u> Per Acre
	Southern Area Farms - 15 pounds per acre	<u>\$11.00</u> Per Acre

	Southern Area Farms - 20 pounds per acre	<u>\$12.00</u> Per Acre
	Southern Area Farms - 25 pounds per acre	<u>\$13.00</u> Per Acre
011D	Pack/Luther Unit and Buffalo Ranch 10 pounds per acre	<u>N/A</u> Per Acre
	Pack/Luther Unit and Buffalo Ranch 15 pounds per acre	<u>N/A</u> Per Acre
	Pack/Luther Unit and Buffalo Ranch 20 pounds per acre	<u>N/A</u> Per Acre
	Pack/Luther Unit and Buffalo Ranch 25 pounds per acre	<u>N/A</u> Per Acre

The Department contemplates the use of aerial application of liquid fertilizer, at a rate of 13-1/2 gallons per acre to the following areas (1) zero to 100 acres on Northern Area Farms; (2) zero to 506 acres on Central Area Farms; (3) zero to 1,389 acres on Southern Area Farms; and (4) zero to 305 acres on Pack/Luther Unit.

This work will be primarily directed at small grains but could be needed on additional cropland.

012 - Category XII - Application of Liquid Fertilizer

012A	Northern Area Farms	<u>N/A</u> Per Acre Application
012B	Central Area Farms	<u>N/A</u> Per Acre Application
012C	Southern Area Farms	<u>\$30.00</u> Per Acre Application
012D	Pack/Luther Unit and Buffalo Ranch	<u>N/A</u> Per Acre Application

The Department contemplates the use of aerial service for seeding clover to approximately (1) zero to 600 acres on Coffield - Beto (Northern); (2) zero to 1,000 acres on Ellis/Estelle, Eastham, and Ferguson (Central); (3) zero to 1,000 acres on Darrington, Ramsey, Scott and Clemens (Southern); and (4) zero to 600 acres on Pack/Luther Unit.

013 - Category XIII - Seeding Clover

013A	Northern Area Farms	<u>N/A</u> Per Acre Application
013B	Central Area Farms	<u>N/A</u> Per Acre Application
013C	Southern Area Farms	<u>\$20.00</u> Per Acre Application
013D	Pack/Luther Unit and Buffalo Ranch	<u>N/A</u> Per Acre Application

The Department contemplates the use of aerial service for seeding common Bermuda grass to approximately (1) zero to 600 acres on Coffield - Beto (Northern); (2) zero to 600 acres on

Ellis/Estelle, Eastham, Ferguson (central); (3) zero to 600 acres on Darrington, Ramsey, Scott and Clemens (Southern); and (4) zero to 600 acres on Pack/Luther Unit.

014 - Category XIV - Seeding Common Bermuda Grass (seeding rate is seven (7) pounds per acre)

014A	Northern Area Farms	<u>N/A</u> Per Acre Application
014B	Central Area Farms	<u>N/A</u> Per Acre Application
014C	Southern Area Farms	<u>\$20.00</u> Per Acre Application
014D	Pack/Luther Unit and Buffalo Ranch	<u>N/A</u> Per Acre Application

B.3 PRICE INCREASES/DECREASES

The Contractor may submit a written request for a price increase to the Department no later than June 1 of each year. The Department will review the request and any change, both increase or decrease in price, will be based on the specified index as published by the Bureau of Labor Statistics, Washington, D.C. 20212, Region VI, 214-767-6970, Index Number WPU0571 - Fuels and related products and power, Gasoline. Baselines shall be the index announced for the month in which the bid was opened. The Department will permit unit price adjustments upward or downward when correlated with the price index specified herein, unless otherwise indicated. Upon review of the Department, if index has decreased, the Department may adjust unit price downward. Any price increase or decrease shall be made via unilateral modification signed by the Department’s Chief Financial Officer with notification made to the Contractor.

SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 BACKGROUND

The Department requires a Contractor to perform aerial crop dusting, seeding and fertilizing applications to various units within the Department, as specified in Section B.2.

C.2 GENERAL DUTIES AND OBLIGATIONS

The Contractor shall provide the Services in accordance with applicable federal and state law, including all constitutional, legal and court ordered requirements, whether now in effect or hereafter effected or implemented. The Contractor shall comply with the Department’s policies, procedures, personnel directives and regulations during the Contract Term. The Contractor shall comply with the Department’s safety requirements and reporting procedures.

C.3 SPECIFIC DUTIES, OBLIGATIONS, AND EQUIPMENT

C.3.1 Aircraft, Equipment and Pilots

A. The Contractor provided a listing of the make, model, horsepower, and boom length of the planes that will be utilized to perform Services under this Contract:

Thrush S2R-H80	800 HP	34” Boom Length
Thrush S2R-T34	750 HP	34” Boom Length

The planes were approved by Manufacturing, Agribusiness and Logistics.

B. The Contractor, if providing Ultra Low Volume (ULV) work, shall have a boom equipped to do such work. Rotary atomizers, forced air atomizers and standard boom arrangements, which are capable of being adjusted for ULV work, shall be accepted.

C. The Contractor shall furnish a loader and loading vehicle with equipment capable of mixing chemicals before being loaded in the aircraft, unless otherwise approved from the Program Administrator(s). On ULV work, it may be necessary to draw vegetable oil out of the Department’s holding tanks. Offender labor will not be used to open pesticide containers or load pesticides into mixing equipment or aircraft. The Contractor shall provide loading equipment for the loading of dry fertilizer into the plane.

D. All pesticide containers shall be triple rinsed by the Contractor in order to wash out settled residue.

E. The Department will supply flaggers for seeding and granular fertilize applications only. All fields shall be hand-flagged, flagged with automatic flagger equipment, or Global Positioning System (GPS). The Contractor shall provide a description of the flagging system that the Contractor will be furnishing for all other applications.

F. Landing strips on each unit will be designated at locations mutually agreeable between the Contractor and the Warden of the unit concerned.

G. Commercial pilots shall have at least two (2) seasons of pest control flying totaling one hundred (100) or more hours.

- H. The Contractor shall provide the name, number of years of agriculture flying experience, and the Texas Department of Agriculture Commercial Applicator License number of each pilot assigned to provide Services under this Contract. The Contractor shall submit in writing to the Program Administrator(s) any additions to the pilots being utilized before the new pilot can provide Services on the Department's agriculture land. In the event of an emergency situation, the Contractor may contact the Program Administrator(s) in person or by telephone to use a new pilot and submit the written documentation within five (5) business days. The Department reserves the right to refuse the Contractor's use of a pilot who has not passed the required criminal background check and whose work has been documented to be inferior to the Department's requirements.

C.3.2 Application

- A. The Department will furnish materials (to include: seed, chemicals, fertilizer and water) to be applied.
- B. The Department's Entomologists and Farm Managers reserve the right to stop or delay spraying by the Contractor due to adverse weather conditions or faulty equipment.
- C. Conventional and ULV sprays are hereby designated as follows:
 - 1. Conventional - one (1) gallon total liquid or more per acre.
 - 2. ULV - one-half (1/2) to six (6) pints total liquid per acre.
- D. When a product label requires that a closed system be used when mixing and loading that product, the Contractor shall be required to furnish a closed system apparatus. Every effort will be made by the Department to notify the Contractor in advance when this system is required for an application.
- E. Swath width may vary with the type of aircraft or boom used. However, at all times, swath width shall be sufficiently tight as to give complete coverage of field being treated. The Department's Entomologists reserve the right to periodically check this coverage.

C.3.3 Employee's General Rules of Conduct

The Contractor shall comply with the Department's listing of PD-22, General Rules of Conduct and Disciplinary Action Guidelines for Employees, which is located on the TDCJ website at <https://www.tdcj.texas.gov/divisions/hr/hr-policy/pd-22.pdf> and PD-29, Sexual Misconduct with Offenders, which is located on the TDCJ website at <https://www.tdcj.texas.gov/divisions/hr/hr-policy/pd-29.pdf>.

C.3.4 Work Schedule

The Department's Entomologists and Farm Managers will coordinate the date and time of Services.

C.3.5 Contractor's Employment Requirements

- A. For any Services performed under this Contract, the Contractor shall not employ any persons with a felony or misdemeanor (A, B or C) conviction without prior written approval of the Department. This includes any employee with a criminal history who is employed by the Contractor at the time of award. The Contractor shall comply with the Texas Department of Criminal Justice PD-75, Applicants With Pending Criminal Charges or Prior Criminal Convictions, which is located on the TDCJ website at <https://www.tdcj.texas.gov/divisions/hr/hr-policy/pd-75.pdf>, in determining eligibility for employment.
- B. Prior to award, a criminal background check shall be completed by the Department for each employee performing Services under this Contract. The results of the criminal background checks must be acceptable to the Department. Applicants with criminal convictions and or pending charges must meet PD-75, requirements. A nominal fee will be charged to the Contractor for these criminal background checks. An additional fee will be charged for any resubmission requests. The Contractor is responsible for conduct and behavior of all persons working on the Department's property and will ensure the Department's Policies are followed, should a violation occur, the Contractor shall take corrective action acceptable to the Department. The Contractor shall notify the Department of employees who resign while under investigation for inappropriate conduct and/or for violations of policies related to the Department security. The Contractor shall immediately notify the Department of any employee who has been arrested, indicted or charged with a criminal offense. Such employee shall not be permitted to return to duty until authorized to do so by the Department.
- C. The Contractor shall submit an annual criminal background check request to the Department for each employee performing Services under the terms of this Contract no later than August 1 of each year. A nominal fee will be charged to the Contractor for the annual criminal background checks. A copy of the annual background check shall be maintained in the employee's personnel file.

SECTION D – REQUIRED REPORTS

D.1 REPORTS REQUIRED FROM CONTRACTOR

DUE DATE	REPORT ITEM	AUTHORITY
OTHER		
Prior to Service Commencement and upon renewal or replacement.	Insurance Certificates and Policies.	Contract, Section H.1
Each Instance	Copy of each subcontract	Contract, Section H.2
Upon delivery of Services to appropriate farm office.	Invoices	Contract, Section G.3

Additional reports may be required from the Contractor during the course of the Contract.

SECTION E - INSPECTION AND ACCEPTANCE**E.1 INSPECTION AND ACCEPTANCE OF SERVICES**

- A. The Department and other government regulatory agencies have the right to inspect and test all Services called for by this Contract, to the extent practicable at all times and places during the Contract Term. The Department shall perform inspections in a manner that will not unduly interfere with the Contractor's performance of Services. The Contractor shall furnish, and shall require subcontractors to furnish, at no increase in the Contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- B. The designated Department representative that oversees the programmatic area will inspect and accept the work performed and Services delivered to ensure compliance with the Contract requirements insofar as the work is concerned. The Program Administrator(s) will determine the adequacy of performance by the Contractor in accordance with the terms and conditions of this Contract.
- C. If subject to the outcome of an audit or inspection, it is determined that the Contractor is in non-compliance with any provisions of this Contract and/or that money is owed to the Department by the Contractor, then the Department may exercise its rights of recovery of money owed as authorized in Section G.4.2 of this Contract.
 - 1. If any of the Services are non-compliant with the Contract requirements, as identified by the Department, the Contractor shall be notified describing the specific areas of non-compliance. The Contractor shall have a twenty (20) day period to file a written response detailing corrective action(s) taken to address all items of non-compliance. The response must include supporting documentation which verifies execution of corrective action(s) taken. Unless otherwise specified, or previously agreed to by the Department, the submission of a corrective action plan shall not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between the Contractor and the Department, no further action regarding such items shall be taken. Any areas of non-compliance shall be corrected within twenty (20) Days or by the date of the Department approved extension.
 - 2. If any of the Services are non-compliant with the Contract requirements, as identified by a government regulatory agency, the Contractor must resolve all items identified as non-compliant by the deadline established by the agency.
- D. Each load is subject to inspection by the Department. The amount of total liquid applied will be tabulated. If the amount of total liquid applied does not approximately equal the correct amount to be applied and the Contractor is determined to be at fault, the Department may terminate this Contract as an Event of Default (Section I.3.1). In addition, if the Contractor refuses to allow inspection of any loads, the Contractor will be asked to leave the unit immediately and a formal complaint and incident report will be put on file at Manufacturing, Agribusiness and Logistics headquarters. Such refusal of inspection may subject this Contract to termination as an Event of Default and may have an adverse effect on the Contractor's ability to obtain any future Department aerial spraying contracts.

E.2 INSPECTION BY STATE EMPLOYEES

The Contractor shall provide entry at all times by the TBCJ and the Department's authorized employees/agents for inspections and other official purposes. The Governor, members of the Legislature and all other members of the Executive and Judicial Departments of the State, as well as any other persons designated by the Department including Office of the Inspector General, shall be admitted to monitor the delivery of Services.

E.3 AUTHORITY TO AUDIT

- A. The Contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. The Contractor further agrees to cooperate fully with the SAO, or its successor, in the conduct of the audit or investigation, including providing all records requested.
- B. The Contractor shall ensure that this Clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.
- C. The Contractor shall reimburse the state of Texas for all costs associated with enforcing this provision.

E.4 AUDITS BY OTHER AGENCIES

- A. Upon receipt of an audit pertaining to the provision of services under this Contract that are conducted by agencies or organizations other than the Department, the Contractor shall provide copies thereof to the Department within thirty (30) days. The Contractor shall provide to the Department copies of responses to the audit within seven (7) days of issuance.
- B. The Contractor is to retain all original audits that are conducted by other agencies for a period of seven (7) years from close of audit. If those records are still in their retention period at the termination of the Contract, all originals must be physically transferred to the Department.

E.5 FRAUD, WASTE OR ABUSE

- A. In accordance with Texas Government Code, Chapter 321, the SAO is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.
- B. If there is a reasonable cause to believe that fraud, waste or abuse has occurred at this agency, it can be reported to the SAO by calling 1-800-892-8348 or at the SAO's website at <http://www.sao.texas.gov/>. It can also be reported to the TDCJ Office of the Inspector General at 1-866-372-8329, the TDCJ Internal Audit Division at 936-437-7100, or Crime Stoppers at 1-800-832-8477.

SECTION F - DELIVERIES OR PERFORMANCE**F.1 PERIOD OF PERFORMANCE**

The Contract will consist of a Base Period of approximately four (4) months (May 8, 2019 through August 31, 2019) and four (4) one (1) year Option Periods (September 1, 2019 through August 31, 2020; September 1, 2020 through August 31, 2021; September 1, 2021 through August 31, 2022 and September 1, 2022 through August 31, 2023).

SECTION G - CONTRACT ADMINISTRATION DATA**G.1 CLAUSES INCORPORATED BY REFERENCE**

This Contract incorporates one (1) or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contract Specialist will make their full text available.

Texas Government Code, Chapter 2251, Payment for Goods and Services.

G.2 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT SPECIALIST, PROGRAM ADMINISTRATOR(S) AND PROGRAM DIRECTOR**G.2.1 Authorized Representative**

- A. In the case of the Contractor, its President or any Vice President shall designate the Authorized Representative in writing. The designation of the Contractor's initial Authorized Representative shall be delivered to the Department no later than the effective date of this Contract. The Contractor's Authorized Representative may designate other persons to assist such Authorized Representative in the performance of certain obligations required by this Contract.
- B. In the case of the Department, the Executive Director is hereby designated as its Authorized Representative. The Executive Director has designated the Chief Financial Officer to act in his/her behalf on matters requiring signature approval of the Authorized Representative. The Director of Manufacturing, Agribusiness and Logistics has been designated as the Authorized Representative to act on behalf of the Chief Financial Officer on all matters pertaining to the daily operations of these Services as outlined in this Contract. The Department's Authorized Representatives may designate other persons to assist such Authorized Representatives in the performance of certain obligations of this Contract.
- C. At any time, any party may designate any person as its Authorized Representative by delivering to the other party a written designation signed, if on behalf of the Contractor by its President or any Vice President, or if on behalf of the Department by the Executive Director. Such designations shall remain effective until new written instruments are filed with or such notice is given to the other party that such designations have been revoked.
- D. The Department's Authorized Representative (the Executive Director) or his/her designated representative (Chief Financial Officer) is the only person authorized to make or approve changes in any of the requirements of this Contract, and notwithstanding any clauses contained elsewhere in this Contract, the said authority remains solely with the Executive Director or his/her designated representative. In the event the Contractor makes any change at the direction of any person other than the Executive Director or his/her designated representative, the change will be considered to have been made without authority and no adjustment will be made in the Contract price to cover any increase in cost incurred as a result thereof.

G.2.2 Contract Specialist

- A. The Contract Specialist for administration of this Contract is Steven Tilley.
- B. The telephone number for the Contract Specialist is (936) 437-7115.
- C. The fax number of the Contract Specialist is (325) 223-0310.
- D. The e-mail address for the Contract Specialist is steven.tilley@tdcj.texas.gov.
- E. The Contract Specialist is responsible for general administration of this Contract, negotiation of any changes and final issuance of written changes/modifications to this Contract. The Department, without prior notice to the Contractor, may at its discretion replace/reassign the Contract Specialist. The Contractor will be notified of the change.

G.2.3 Program Administrator(s)

- A. The Program Administrators for this Contract are Todd Swick and Mike Corley.
- B. The telephone numbers for the Program Administrators are (936) 437-6652 and (936) 437-6641.
- C. The fax number of the Program Administrators is (936) 437-6648.
- D. The e-mail addresses are todd.swick@tdcj.texas.gov and mike.corley@tdcj.texas.gov.
- E. The Program Administrators represent the Executive Director in the administration of technical details within the scope of this Contract. The Program Administrators are also responsible for the final inspection and acceptance of all reports and such other responsibilities as may be specified in the Contract.
- F. The Program Administrators are not authorized to make any representations or commitments of any kind on behalf of the Executive Director of the Department or the State of Texas. The Program Administrator does not have the authority to alter the Contractor's obligations or to change the Contract specifications, price, terms or conditions.
- G. The Program Administrator(s) assignment for this Contract may be changed at any time by the Department without prior notice to the Contractor.

G.2.4 Program Director

- A. The Program Director for this Contract is David Andrew Christian.
- B. The telephone number for the Program Director is (979) 922-8623.
- C. The fax number for the Program Director is (979) 922-1023.
- D. The e-mail address for the Program Director is garrettflyers@gmail.com.

- E. The Contractor shall provide a Program Director for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact with the Department.
- F. The Program Director shall have full authority to act for the Contractor in the performance of the required Services.
- G. The Program Director or a designated representative shall meet with the Program Administrator(s) to discuss problems as they occur.

G.3 INVOICE REQUIREMENTS

- A. The Contractor's invoice shall include the following:
 - 1. Contract Number;
 - 2. Name of business and remittance address;
 - 3. Invoice date;
 - 4. Descriptions, price and quantity of services rendered, including the Contract Line Item Number;
 - 5. Prompt payment discount; and
 - 6. Name, title, phone number and complete mailing address of responsible official to whom payment is to be sent.
- B. Original invoices with appropriate documentation shall be submitted to the appropriate farm office at the time of Service.

G.4 PAYMENTS

- A. Payment is to be made by the Department to the Contractor after Services are rendered and invoices have been submitted accurately and completely.
- B. The Contractor may offer the Department a prompt payment discount, such as, of one percent (1%), ten (10) days (see Page 1, Block 7), if the Contractor requests an expedited Payment. Prompt payment discounts must also be stated on each invoice.
- C. Before the expiration date of this Contract, the Department may make, or have made, an inspection to determine full compliance in every respect with this Contract. Failure of the Contractor to fully and faithfully perform under this Contract shall subject the Contractor to satisfactorily complete Services prior to the expiration date. The Department may withhold any monies due to the Contractor or claimed to be due to the Contractor until the terms of this Contract have been fulfilled and the work of the Contractor accepted.
- D. It is recommended that the Contractor receive Payments via Electronic Funds Transfer (EFT), also known as direct deposit.

- E. Regardless as to whether direct deposit is chosen, upon Contract award the Contractor shall submit a completed Vendor Maintenance Direct Deposit and Substitute W-9 Form to the following address:

Texas Department of Criminal Justice
 Attention: Accounts Payable
 P.O. Box 4018
 Huntsville, Texas 77342-4018

If the Contractor has previously submitted a completed Vendor Maintenance Direct Deposit and Substitute W-9 Form to the Department for another separate contract, another form is not required to be submitted.

The form and instructions can be found at the following link on the TDCJ website:
https://www.tdcj.texas.gov/divisions/bfd/acct_accts_pay.html.

- F. In the event the Contractor elects to decline direct deposit on the Vendor Maintenance Direct Deposit and Substitute W-9 Form, the Payment will be mailed to the following remittance address:

Garrett Flying Service
2111 County Rd 33
Danbury, TX 77534

G.4.1 Late Payment

Any amount owed to the Contractor more than one (1) day beyond the date such amount is due as described in Section G.4 hereof shall accrue interest each day that such amount is not paid at the rate specified by Texas Government Code, Section 2251.025, provided, however, that this provision shall not excuse failure by the Department to make Payment in strict accordance with this Contract.

G.4.2 Withholding of Payment

- A. The Department shall have the right to withhold the Payment to the Contractor until the failures described below have been corrected.
 - 1. Failure to respond to audit reports as set forth in Section E.1.C; and
 - 2. Failure to correct identified areas of non-compliance to the satisfaction of the Department within twenty (20) days upon receipt of written notification.
- B. The Contractor agrees that the Department shall not pay interest to the Contractor for monies so withheld.
- C. The Payment withheld shall be released upon the Department’s satisfaction that compliance has been achieved for thirty (30) consecutive days.

D. With the exception of disputed issues, such withholding of final Payment by the Department shall not exceed one hundred twenty (120) days from the date of Contract termination.

G.5 PAYMENT OF DEBT OWED TO THE STATE OF TEXAS

As required by Texas Government Code, Section 2252.903, the Contractor agrees that any payments due under this Contract shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. The Contractor shall comply with the rules adopted by the Department under Texas Government Code, Sections 403.055, 403.0551, 2252.903 and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

G.6 RIGHT TO OFFSET

In the event the Department determines that the Contractor owes money to the Department under any contract or purchase order, the Department, upon providing the Contractor with written notice of its intent to offset, shall have the right to withhold monies due to the Contractor with respect to this Contract or purchase order or with respect to any contract or purchase order with the Department and apply such monies to the money due to the Department.

SECTION H - SPECIAL CONTRACT REQUIREMENTS**H.1 INSURANCE REQUIREMENTS**

- A. Prior to the approval of this Contract by the Department, the Contractor shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to the Department. It is recommended that coverage be with a company or companies having both a Financial Strength Rating of "A" or better and Financial Size Category Class of "VII" or better from A.M. Best Company, Inc.
- B. The insurance shall be evidenced by delivery to the Department of certificates of insurance executed by the insurer or its authorized agent stating coverage, limits, expiration dates and compliance with all applicable required provisions.
- C. Upon request, the Department shall be entitled to receive without expense, copies of the policies and all endorsements. Copies and changes to the initial insurance policies, including extensions, renewals, cancellations and revisions shall be submitted to the Contract Specialist within thirty (30) days of the effective date.
- D. Subject to the Contractor's right to maintain reasonable deductibles, the Contractor shall obtain and maintain in full force and effect for the duration of this Contract and any extension hereof, at the Contractor's sole expense, insurance coverage in the following type(s) and amounts:
1. **Workers' Compensation** with statutory limits; **Employers Liability** with minimum limits for bodily injury:
 - a. By accident, \$500,000 per each accident; and
 - b. By disease, \$500,000 per employee with a per policy aggregate of \$1,000,000.
 2. **Commercial Automobile Liability Insurance** covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence.
 3. **Commercial General Liability Insurance** including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, independent contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 products/completed operations aggregate and \$2,000,000 general aggregate.
 - a. Civil Rights Liability must be provided with the same liability limits. It may be included with the General Liability Policy or written on a separate policy.
 - b. Liability coverage shall include coverage for damage to property and injury to persons caused by boiler and other equipment malfunction. The policy shall contain an endorsement to include coverage for the property of third parties.
 - c. The Department shall be named as an additional insured by using endorsement CG2026 or broader.

Note: If the insurance described in paragraphs 3 above is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than sixty (60) months following completion of the Contract and acceptance by the Department. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to this Contract.

H.1.1 Required Provisions

The Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- A. Name the Department and its officers, employees and elected representatives as additional insured to all applicable coverages.
- B. Waive subrogation against the Department, its officers, employees and elected representatives, for bodily injury (including death), property damage or any other loss, to all applicable coverages.
- C. Provide that the Contractor's insurance is the primary insurance in regards to the Department, its officers, employees and elected representatives.
- D. Provide that all provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- E. Ensure that all certificates of insurance identify the Service or product being provided and the name of the responsible party.
- F. The Contractor through an insurance agent licensed by the State of Texas shall obtain all insurance coverage and an insurance company licensed to issue such coverage in this State shall provide such coverage. No "self-insurance" coverage shall be acceptable. All policies shall include a provision requiring a written notice of cancellation to the Department.
- G. All insurance coverage obtained by the Contractor shall continue in full force and effect during the Contract Term. No Contract shall be entered into between the Contractor and the Department unless insurance coverage binders are received by the date scheduled for the execution of the Contract. Proof of insurance policies must be delivered prior to the Service Commencement Date.
- H. The Contractor may choose the amount of deductible for any other insurance coverage required (above) to be obtained by the Contractor. The deductible may exceed five percent (5%) of the required yearly aggregate limit of coverage for each occurrence. The Contractor is responsible for the first (1st) dollars to be paid for any such claim.
- I. The Contractor is responsible for the first (1st) dollar defense coverage. All general liability and professional liability policies shall provide defense in addition to the policy limits.
- J. The limits required herein are minimum acceptable. However, these limits are not to be construed as being the maximum any prospective contractor may wish to purchase for their own benefit.

- K. As respect to the total limits of liability required, any combination of primary and/or umbrella coverage may satisfy those totals. However, if an umbrella is used, coverage must be at least as broad as the primary coverage.

H.2 SUBCONTRACTORS

- A. The Contractor may subcontract for the performance of any of its responsibilities to provide Services pursuant to this Contract.
- B. No subcontract may be entered into unless the Department provides prior written approval, which approval may not be unreasonably withheld.
- C. If a subcontractor is deemed to be needed for an event of an emergency nature, verbal approval may be obtained through an authorized Department representative. The Contractor shall submit a written request with supporting documentation for approval by the Department, as soon as possible.
- D. The Contractor shall furnish to the Department copies of all subcontracts, without regard to the amount of annual payments.
- E. Any arrangement by the Contractor with an affiliate or member company to provide Services for this Contract shall be subject to the subcontractor provisions of this Section.
- F. No contractual relationship shall exist between the Department and any subcontractor and the Department shall accept no responsibility whatsoever for the conduct, actions or omissions of any subcontractor selected by the Contractor.
- G. The Contractor shall be responsible for the management of the subcontractors in the performance of their work.
- H. A subcontractor may not work directly with the Department in any manner and shall not be included in the Contract award, renewals, audits, or any other discussions except at the request of the Department.
- I. Unless waived in writing by the Department, the subcontract shall contain the following:
 - 1. An acknowledgement that the subcontract is subject to the Contract between the Department and the Contractor (the "Master Contract").
 - 2. The subcontractor shall agree to comply with the terms of the Master Contract to the extent applicable with respect to goods and Service being provided under the subcontract. It is the intention of the parties of the subcontract that the subcontractor shall "stand in the shoes" of the Contractor with respect to fulfilling the duties and obligations of the Contractor to the Department under the Master Contract.
 - 3. The Department's approval of a subcontract does not relieve the Contractor of its duty to perform under the Master Contract.
 - 4. The Department shall be deemed a "third party beneficiary" to the subcontract.

5. The subcontract shall contain the required Authority to Audit Clause referenced in Section E.3, and the required Non-Discrimination Clause referenced in Section I.12.

H.2.1 Insurance

The Contractor shall require all subcontractors to obtain, maintain and keep in force insurance coverage in accordance with accepted industry standards and the Contract during the time they are engaged hereunder.

H.3 UTILIZATION OF SERVICES

The Department does not covenant or represent to the Contractor a minimum amount of Service that will be performed under this Contract. The Department will not be liable to the Contractor for loss of profits or damages incurred by the Contractor in the event that the Department does not utilize aerial spraying Services from the Contractor.

H.4 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS

- A. The Contractor shall comply with Texas Government Code, Section 2155.4441 relating to the service contract use of products produced in the State of Texas.
- B. In performing Services under this Contract, the Contractor 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 of Texas.

H.5 BOOKS AND RECORDS

The Contractor must retain all financial records, including supporting documents, statistical records, and any other records or books, relating to the Contractor's performance under the Contract. These records must be maintained in accordance with the Department's Records Retention Schedule. The Contractor will grant access to all books, records, and documents pertinent to the Contract to the Department, SAO, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

H.6 FELONY CRIMINAL CONVICTIONS

The Contractor represents and warrants that the Contractor has not and the Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, the Contractor has fully advised the Department as to the facts and circumstances surrounding the conviction.

H.7 SECURITY

The Contractor's employees and representatives, vehicles and equipment must be under security surveillance at all times and are subject to inspection at any time while on State property. The Contractor agrees to abide by all Department Policies and unit rules and regulations on State property. These rules, in part, prohibit the introduction of alcohol, narcotics, weapons, gambling paraphernalia, pagers and cellphones to any State property. This includes having these items in the personal vehicles of on-site employees. The Contractor's employees may not carry more than twenty-five dollars (\$25.00) in cash into any Department facility. Tobacco products are strictly prohibited on TDCJ units, but are allowed in the personal vehicles of on-site employees or

in designated smoking areas. All vehicles must be kept locked when not in use and the Contractor's employee must stay with the vehicle when it is unlocked.

H.8 ORGANIZATIONAL AND NAME CHANGE

The Contractor shall submit written notification to the Department within thirty (30) Days of any changes in the Contractor's name, address, telephone number, fax number and/or e-mail address with an effective date of such change. The Contractor shall submit to the Department a copy of any registration "to do business as," "DBA," or "also known as," "AKA," and any legal corporate name change filed with the Secretary of State.

H.9 FREE EXERCISE OF RELIGION

The Contractor is prohibited from substantially burdening an employee's or Offender's free exercise of religion.

H.10 DELAY OF SERVICES

The Contractor shall meet its obligations to commence Services within the time frames defined by the Contract. In the event the Contractor fails to meet those time frames as defined by the Contract, absent extensions from the Department, the Department will have the right to obtain the Services from another source and charge the cost thereof to the Contractor for each day that Services are not performed due to delays caused by the Contractor's nonperformance. The Department will provide written notification to the Contractor by certified mail, return receipt requested, of the charges which will include the date of imposition and the amount that has accrued daily as of the date of the notification.

SECTION I - CONTRACT CLAUSES**I.1 AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR**

- A. Funds are not presently available for performance under this Contract beyond August 31, 2019.
- B. The Department's obligation for performance of this Contract beyond that date is contingent upon legislative approval and the availability of appropriated funds from which Payment for Contract purposes can be made.
- C. No legal liability on the part of the Department for any Payment may arise for performance under this Contract beyond August 31, 2019, until funds are made available to the Department for performance and until the Contractor receives notice of availability.
- D. Refer to Section I.3.4, Termination for Unavailability of Funds, for the Department's right to terminate this Contract in the event it is appropriated insufficient funds.

I.2 ADVERTISING OF AWARD

The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product(s) or Service(s) provided is endorsed or preferred by the Department or is considered by the Department to be superior to other products or Services.

I.3 DEFAULT AND TERMINATION**I.3.1 Default by the Contractor**

Each of the following shall constitute an Event of Default on the part of the Contractor:

- A. A material failure to keep, observe, perform, meet, or comply with any covenant, agreement, term, or provision of this Contract to be kept, observed, met, performed, or complied with by the Contractor hereunder, when such failure continues for a period of twenty (20) days after the Contractor's receipt of written notice thereof;
- B. A material failure to meet or comply with, Department Policy, any court order, federal or state requirement or law, when such failure continues for a period of twenty (20) days after the Contractor's receipt of written notice thereof;
- C. The Contractor's material failure to comply with any Department Policies for which the Contractor has been expressly required to comply and for which the Contractor has not received a prior written waiver from the Department, when such failure continues for a period of twenty (20) days after the Contractor's receipt of written notice thereof;
- D. Insolvency of the Contractor as evidenced by any of the following occurrences:
 - 1. Its inability to pay its debts;
 - 2. Any general assignment for the benefit of creditors;

3. Any decree or order appointing a receiver or trustee for it or substantially all of its property to be entered and, if entered without its consent, not to be stayed or discharged within sixty (60) days;
 4. Any proceedings under any law relating to bankruptcy, insolvency, or the reorganization or relief of debtors to be instituted by or against it and, if contested by it, not to be dismissed or stayed within sixty (60) days; or
 5. Any judgment, writ of attachment or execution, or any similar process to be issued or levied against a substantial part of its property which is not released, stayed, bonded, or vacated within sixty (60) days after issue or levy.
- E. The discovery by the Department that any statement, representation or warranty in this Contract is false, misleading, or erroneous in any material respect; or
- F. A failure by the Contractor to comply with contractual terms and conditions, resulting in a breach of security or health and safety standards. This Event of Default may result in the immediate termination of this Contract.

I.3.2 Further Opportunity to Cure

- A. If an Event of Default of the type specified in Section I.3.1 occurs and the Contractor reasonably believes that such Event of Default cannot be cured within the twenty (20) days allowed in Section I.3.1 but that such Event of Default can be cured through a diligent, on-going, and conscientious effort on the part of the Contractor, within a reasonable period not to exceed three (3) months, then the Contractor may, within the twenty (20) day cure period, submit a detailed plan for curing the Event of Default to the Department.
- B. Upon receipt of any such plan for curing an Event of Default, the Department shall promptly review such plan and at its discretion, which must be reasonable in the circumstances, may allow, or not allow, the Contractor to pursue such plan of cure.
- C. The decision of the Department will be communicated in writing to the Contractor.
- D. The Department agrees that it will not exercise its remedies thereunder with respect to such Event of Default for so long as the Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.
- E. If the Department does not allow the Contractor an extension of the cure period, the twenty (20) day time period shall be tolled during the period of time the request is pending before the Department.

I.3.3 Remedy of the Department

When an Event of Default by the Contractor has been determined to exist, the Department's Authorized Representative will notify the Contractor, in writing, of such Event of Default, and subject to the provisions of Section I.3.2, the Department will have the right to pursue any remedy it may have by law or in equity including, but not limited to:

- A. Reducing its claim to a judgment;

- B. Taking action to cure the Event of Default, in which case the Department may offset against any Payments owed to the Contractor all reasonable costs incurred by the Department in connection with its efforts to cure such Event of Default;
- C. Withholding of funds as authorized in Section G.4.2; or
- D. Exercising a Termination for Default.
 - 1. In the event of Termination for Default, the Department shall offset against Payments owed to the Contractor any reasonable amounts expended by the Department to cure the Event of Default.
 - 2. The Department will have no further obligations to the Contractor after such termination.
 - 3. The Department may also acquire, in the manner the Department considers appropriate, services similar to those terminated and the Contractor will be liable to the Department for any increase in costs for those services.
 - 4. The Contractor shall not be liable for any increase in costs if the failure to perform the Contract arises from and without the fault or negligence of the Contractor as follows:
 - a. Acts of God or of the public enemy;
 - b. Acts of the State in either its sovereign or contractual capacity;
 - c. Fires;
 - d. Floods;
 - e. Epidemics;
 - f. Quarantine restrictions;
 - g. Strikes;
 - h. Freight embargoes; and
 - i. Unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

I.3.4 Termination for Unavailability of Funds

- A. The Payment of money by the Department or the State under any provisions hereof is contingent upon the availability of funds appropriated by the Legislature to an agency or department of the State to cover the provisions hereof.
- B. Neither the State, the Department nor its elected officials, officers, employees, agents, attorneys or other individuals acting on behalf of the State, make any representations or

warranty as to whether any appropriation will, from time to time during the Contract Term, be made by the Legislature of the State.

- C. In the event State funds for this Contract become unavailable due to Non-Appropriation, the Department will have the right to terminate the Contract without penalty.
- D. The Contractor acknowledges that the Department does not receive a "line item appropriation".
 - 1. If the funds appropriated are not sufficient to pay for the Department's operating expenses, contractual obligations and other financial obligations, the Department, in its sole discretion, will determine what operating expenses, contractual obligations and other financial obligations it will pay.
 - 2. In the event the Department determines it was not appropriated sufficient money, the Department may terminate this Contract without paying the Contractor any additional money or penalty, provided that the Department will pay the Contractor for obligation that occurred up to the time of termination.

I.3.5 Non-Appropriation Effect and Remedy

An event of Non-Appropriation shall not cause the Department to be in default hereunder, but upon any such event of Non-Appropriation, this Contract shall automatically terminate as of the last day of the Biennium for which appropriations have been made.

I.3.6 Termination for Convenience

The Department may, in its sole discretion, terminate this Contract with or without cause, by providing the Contractor with sixty (60) days prior written notice of such termination.

I.3.7 Termination by Mutual Agreement

The parties may terminate this Contract by mutual agreement, the terms of which shall be set forth in writing.

I.3.8 Termination Procedures

- A. Upon Termination for Default, Termination for Convenience, Termination by Mutual Agreement or Termination for Unavailability of Funds as heretofore mentioned, the following procedures will be adhered to:
 - 1. The Department will immediately notify the Contractor in writing specifying the effective termination date.
 - 2. After receipt of the Notice of Termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
 - a. Place no further subcontracts or orders in support of this Contract;
 - b. Terminate all subcontracts; and

- c. Cancel all orders as applicable.
- B. Upon termination, the Contractor shall be entitled to receive from the Department Payment for all Services satisfactorily furnished under this Contract up to and including the date of termination. Claims submitted after one hundred eighty (180) days from the date of termination will not be considered.

I.3.9 Default by the Department

Each of the following shall constitute an Event of Default on the part of the Department:

- A. Failure by the Department to observe and perform any material covenant, condition, or agreement on its part to be observed or performed; or
- B. Its failure or refusal to substantially fulfill any of its material obligations hereunder, unless caused by the default of the Contractor; and
- C. Unless cured by the Department within twenty (20) days after receiving written notice thereof.

I.3.10 Remedy of the Contractor

Upon an Event of Default by the Department, the Contractor's sole remedy shall be to follow the Dispute Resolution Process in Section I.3.11 below.

I.3.11 Dispute Resolution

- A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between the Department and the Contractor shall be resolved as follows:
 - 1. The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall be used, as further described herein, by the Department and the Contractor to attempt to resolve any claim for breach of Contract made by the Contractor.
 - 2. A Contractor's claims for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Texas Government Code, Chapter 2260, Subchapter B.
 - 3. To initiate the process, the Contractor shall submit written notice, as required by Texas Government Code, Chapter 2260, Subchapter B, to the Contracts and Procurement Director or designee, at Two Financial Plaza, Suite 525, Huntsville, Texas 77340.
 - 4. Said notice shall specifically state the provisions of Texas Government Code, Chapter 2260, Subchapter B, are being invoked, and shall also be given to all other representatives of the Department and the Contractor otherwise entitled to notice under the parties' Contract.
 - 5. Compliance by the Contractor with Texas Government Code, Chapter 2260, Subchapter B, is a condition precedent to the filing of a contested case proceeding under Texas Government Code, Chapter 2260, Subchapter C.

6. The contested case process provided in Texas Government Code, Chapter 2260, Subchapter C, is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the Department if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.
 7. Compliance with the contested case process provided in Texas Government Code, Chapter 2260, Subchapter C, is a condition precedent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code.
 8. Neither the execution of this Contract by the Department nor any other conduct of any representative of the Department related to the Contract shall be considered a waiver of sovereign immunity to suit.
- B. In addition to complying with Texas Government Code, Chapter 2260, the Department and the Contractor shall comply with the rule published in Texas Administrative Code, Title 37, Part 6, Chapter 155, Subchapter C, Rule 155.31.
 - C. At all times during the course of the dispute resolution process, the Contractor shall continue with providing Services as directed, in a diligent manner and without delay, shall conform to the Department's directive, decision or order, and shall be governed by all applicable provisions of this Contract.
 - D. Records of the Services performed shall be kept in sufficient detail to enable payment in accordance with applicable provisions of this Contract, if this should become necessary.
 - E. This provision shall not be construed to prohibit the Contractor from seeking any other legal or equitable remedy to which it is entitled.

I.4 NO WAIVER OF RIGHTS

- A. No failure on the part of any party to exercise, and no delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or in the exercise of any other right.
- B. The remedies provided in this Contract are cumulative and non-exclusive of any remedies provided by law or in equity, except as expressly set forth herein.

I.5 INDEMNIFICATION OF THE DEPARTMENT

I.5.1 Acts or Omissions

The Contractor shall indemnify and hold harmless the State of Texas, the Department, the TBCJ, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of, or resulting from any acts or omissions of the Contractor or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any purchase orders issued under the Contract. The defense shall be coordinated by the Contractor with the Office of the Attorney

General when Texas State Agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. The Contractor and the Department agree to furnish timely written notice to each other of any such claim.

I.5.2 Infringements

The Contractor shall defend, indemnify, and hold harmless the Department and the State of Texas from and against any and all claims, violations, misappropriations or infringement of any patent, trademark, copyright, trade secret or other intellectual property rights and/or other intangible property, publicity or privacy rights, and/or in connection with or arising from: (1) the performance or actions of the Contractor pursuant to this Contract; (2) any deliverable, work product, configured Service or other service provided hereunder; and/or (3) the Department's and/or the Contractor's use of or acquisition of any requested Services or other items provided to the Department by the Contractor or otherwise to which the Department has access as a result of the Contractor's performance under the Contract. The Contractor and the Department agree to furnish timely written notice to each other of any such claim. The Contractor shall be liable to pay all costs of defense, including attorney fees. The defense shall be coordinated by the Contractor with the Office of the Texas Attorney General (OAG) when Texas state agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from OAG. In addition, the Contractor will reimburse the Department and the State of Texas for any claims, damages, costs, expenses or other amounts, including, but not limited to, attorney fees and court costs, arising from any such claim. If the Department determines that a conflict exists between its interests and those of the Contractor or if the Department is required by applicable law to select separate counsel, the Department will be permitted to select separate counsel and the Contractor will pay all reasonable costs of the Department's counsel.

I.5.3 Taxes/Workers' Compensation/Unemployment Insurance - Including Indemnity

- A. The Contractor agrees and acknowledges that during the existence of this Contract, the Contractor shall be entirely responsible for the liability and payment of the Contractor's and the Contractor's employees' taxes of whatever kind, arising out of the performances in this Contract. The Contractor agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The Department and/or the State shall not be liable to the Contractor, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a State employee or employee of another governmental entity customer.
- B. The Contractor agrees to indemnify and hold harmless the Department, the TBCJ, the State of Texas and/or their employees, agents, representatives, contractors, and/or assignees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses, relating to tax liability, unemployment insurance and/or workers' compensation in its performance under this Contract. The Contractor shall be liable to pay all cost of defense including attorney fees. The defense shall be coordinated by the Contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. The Contractor and the Department agree to furnish timely written notice to each other of any such claim.

I.6 NO WAIVER OF DEFENSES

- A. Neither the Department nor the Contractor shall waive, release or otherwise forfeit any possible defense the Department or the Contractor may have regarding claims arising from or made in connection with the performance of the Services by the Contractor without the consent of the other party.
- B. The Department and the Contractor shall reserve all such available defenses and cooperate with each other to make such defenses available for each other's benefit to the maximum extent allowed by law, including any defenses the Department may have regarding litigation, losses and costs resulting from claims or litigation pending at the time the Contract becomes effective, or arising thereafter from occurrences prior to the effective date hereof.

I.7 INDEPENDENT CONTRACTOR

- A. The Contractor is associated with the Department only for the purposes and to the extent set forth herein, and with respect to the performance of Services hereunder, the Contractor is and shall be an independent contractor and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties hereunder.
- B. Nothing contained herein shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principal-agent, or to otherwise create any liability for the Department whatsoever with respect to the indebtedness, liabilities, and obligations of the Contractor or any other party.
- C. The Contractor shall be solely responsible for (and the Department shall have no obligation with respect to) payment of all Federal Income, FICA, and other taxes owed or claimed to be owed by the Contractor, arising out of the Contractor's association with the Department pursuant hereto, and the Contractor shall indemnify and hold the Department harmless from and against any and all liability from all losses, damages, claims, costs, penalties, liabilities, and expenses howsoever arising or incurred because of, incident to, or otherwise with respect to any such taxes.

I.8 LAWS OF TEXAS

This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas.

I.9 ASSIGNMENT

- A. The Contractor may not assign any interest in this Contract without the prior written consent of the Department which consent the Department may withhold at its sole discretion.
- B. If the Department so elects in its sole discretion, this Contract will terminate upon the occurrence of any of the following:
 - 1. More than fifty percent (50%) of the assets of the Contractor are sold;
 - 2. The Contractor is merged into, acquired by, or consolidated with another corporation or business entity; or is otherwise the subject of reorganization; or

3. Any shareholder or owner of the Contractor who owns at least ten percent (10%) beneficial ownership of the Contractor fails to continue to own at least ten percent (10%).
- C. In the event that any sale, transfer, or assignment, as referenced in paragraphs A and B above, is consented to by the Department, the transferee or its legal representative shall agree in writing with the Department to assume, perform and be bound by the covenants, obligations and agreements contained herein.

I.10 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS

- A. The Contractor, if incorporated, shall at all times maintain its corporate existence and authority to transact business and be in good standing in its jurisdiction of incorporation and the State of Texas.
- B. The Contractor shall maintain all licenses, permits and franchises necessary for its business where the failure to so maintain might have a material adverse effect on its ability to perform its obligations under this Contract.

I.11 APPROVAL OF CONTRACT

- A. This Contract is subject to written approval of the Executive Director of the Department or the Director's designated representative and shall not be binding until so approved.
- B. For Contracts valued over \$1,000,000.00 in the initial Contract Term, the Executive Director's approval shall be given only on the approval of the TBCJ.

I.12 NON-DISCRIMINATION

In the performance of this Contract, the Contractor warrants that it shall not discriminate against any employee, subcontractor, participant or provider on account of race, color, disability or perceived disability, religion, sex, national origin, genetic information, or age, and in accordance with the following:

- A. The Contractor shall not discriminate against employees, subcontractors, participants or providers who have or are perceived to have a disability because of Acquired Immune Deficiency Syndrome (AIDS) or Human Immunodeficiency Virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The Contractor shall post notices setting forth the provisions of this Non-Discrimination Clause in conspicuous places, available to employees and applicants for employment.
- B. In all solicitations or advertisements for employees and/or the purchase of Services, the Contractor shall state that it is an equal opportunity employer; provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting this requirement.
- C. The Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions shall be binding upon each subcontractor or vendor.

I.13 CONFIDENTIALITY AND OPEN RECORDS**I.13.1 Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of the Contract shall be kept confidential unless otherwise provided by law and shall not be made available to any individual or organization by the Contractor or the Department without prior approval of the other party.

I.13.2 Open Records

In accordance with Texas Government Code, Section 2252.907, the Contractor acknowledges that this Contract and information created or maintained in connection with this Contract is public information and subject to disclosure as provided by Texas Government Code, Chapter 552 (Texas Public Information Act). The Texas Public Information Act may require the Contractor to make information related to this Contract available to the public pursuant to a request for public information. The Contractor agrees, upon request, to make information related to this Contract that is not otherwise excepted from release by the Texas Public Information Act available to the public, in hard copy, unless the requestor of the information consents to receive the information in another mutually agreeable format. The Contractor acknowledges that the agency shall not provide legal counsel related to the Contractor's compliance with the Texas Public Information Act.

I.14 CONTRACT CHANGES

- A. Changes/modifications to this Contract (except Contract extensions in accordance with Sections I.15 and I.16; administrative changes; such as changing the Contract Specialist designation; correcting typographical errors; or other unilateral changes discussed elsewhere in the Contract) shall be mutually agreed to by the parties and executed in writing with the authorized signatures.
- B. The Department, at its sole discretion, may revise funding during the course of this Contract by issuing a unilateral modification to the Contractor.

I.15 OPTION TO EXTEND THE TERM OF THE CONTRACT

- A. The Department may, at its sole discretion, extend the Contract Term by written notice to the Contractor within ten (10) days of Contract expiration, provided that the Department shall give the Contractor a preliminary written notice of its intent to extend at least sixty (60) days before the Contract expires.
- B. The preliminary notice does not commit the Department to an extension.
- C. If the Department exercises this option, the extended Contract shall be considered to include this option provision.

I.16 OPTION TO EXTEND SERVICES

- A. The Department may require continued performance of any Services within the limits and at the rates specified in this Contract.

- B. The Department reserves the right to extend this Contract for a ninety (90) day period at the end of each Contract and/or extension period for the purpose of re-advertising the Service, awarding a new contract, and transitioning into a new contract.
- C. This option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed six (6) months.
- D. The Department may exercise the option by written notice to the Contractor within the period specified in Section I.15.

I.17 SEVERABILITY

In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

I.18 IMMIGRATION

The Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and all subsequent immigration laws and amendments.

I.19 NO LIABILITY UPON TERMINATION

If this Contract is terminated for any reason, the Department and the State of Texas shall not be liable to the Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, the Contractor may be entitled to the remedies established in Section I.3.11.

I.20 LIMITATION ON AUTHORITY

The Contractor shall have no authority to act for or on behalf of the Department or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. The Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or the Department.

I.21 INTELLECTUAL PROPERTY INDEMNIFICATION

- A. The Contractor will indemnify, defend, and hold harmless the State of Texas and the Department against any action or claim brought against the State of Texas and/or the Department that is based on a claim that software infringes any patent rights, copyright rights or incorporated misappropriated trade secrets. The Contractor will pay any damages attributable to such claim that are awarded against the State of Texas and/or the Department in a judgment or settlement.
- B. If the Department's use of the software becomes subject to a claim, or is likely to become subject to a claim, in the sole opinion of the Department, the Contractor shall, at its sole expense (1) procure for the Department the right to continue using such software under the terms of this Contract; or (2) replace or modify the software so that it is non-infringing.

I.22 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY TEXAS ADMINISTRATIVE CODE, TITLE 1, PART 10, CHAPTER 213

- A. Effective September 1, 2006 State Agencies and Institutions of Higher Education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in Texas Administrative Code, Title 1, Part 10, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- B. The Contractor shall provide the Department with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under the Rehabilitation Act, Section 508), or indicate that the product/Service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Contractors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide the Department with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

I.23 RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP)

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the Department by the Contractor upon completion, termination, or cancellation of this Contract. The Contractor may, at its own expense, keep copies of all its writings for its personal files. The Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department; provided, however, that the Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

I.24 FORCE MAJEURE

- A. Neither the Contractor nor the Department shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform.
- B. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.
- C. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

I.25 NOTICES

Any written notices required under this Contract will be delivered by carrier service to the Contractor's office address specified on Page 1, of this Contract or by U.S. mail or e-mail.

Notices to the Department shall be sent to:

Steven Tilley, Contract Specialist
Texas Department of Criminal Justice
Contracts and Procurement Department
Two Financial Plaza, Suite 525
Huntsville, Texas 77340
steven.tilley@tdcj.texas.gov

Notice will be effective upon receipt by the affected party. The Department may change the designated notice address in this Section by written notification to the Contractor. This change shall be incorporated with a unilateral modification.

I.26 SUBSTITUTIONS

Substitutions are not permitted without written approval of the Department.

I.27 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM

- A. By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
1. All persons employed to perform duties within Texas, during the Contract Term; and
 2. All persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.
- B. The Contractor shall provide, upon request of the Department, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and the Contractor's subcontractors, as proof that this provision is being followed.
- C. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the State and at no fault to the State, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the State must undertake to replace the terminated Contract.

I.28 ANTITRUST AFFIRMATION

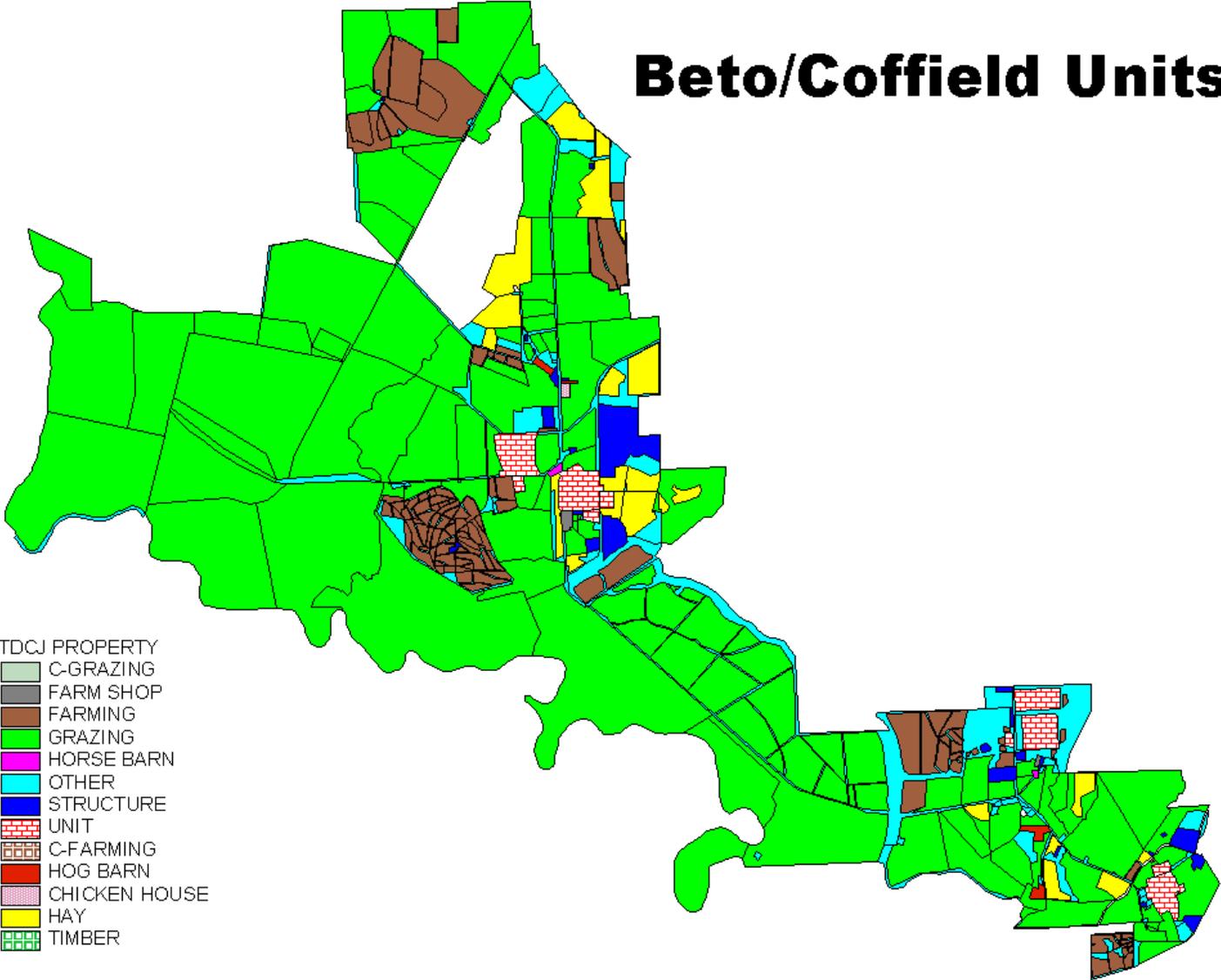
The Contractor shall confirm, under penalty of perjury of the laws of the State of Texas that (1) in connection with this Contract, neither the Contractor nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Texas Business and Commerce Code Chapter 15; (2) in connection with this Contract, neither the Contractor nor any

representative of the Contractor have violated any federal antitrust law; and (3) neither the Contractor nor any representative of the Contractor have directly or indirectly communicated any of the contents of this Contract to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

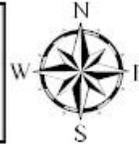
SECTION J - LIST OF EXHIBITS

EXHIBIT NO.	TITLE	NUMBER OF PAGES
J.1	Aerial Maps	10

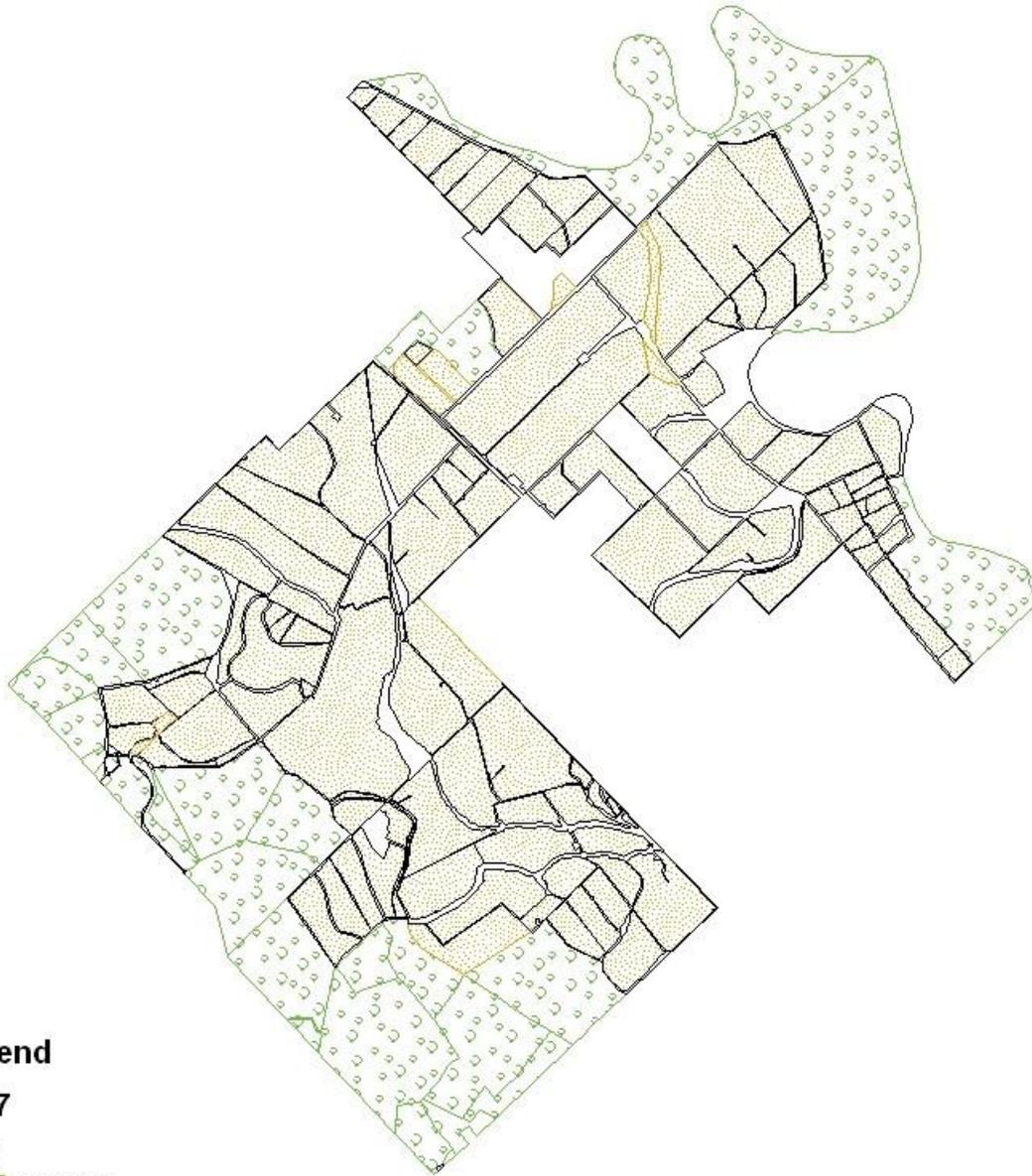
Beto/Coffield Units



 this map prepared by:
Texas Department of Criminal Justice
Agribusiness, Land and Minerals
Huntsville, Texas



BUFFALO RANCH USE MAP



Legend

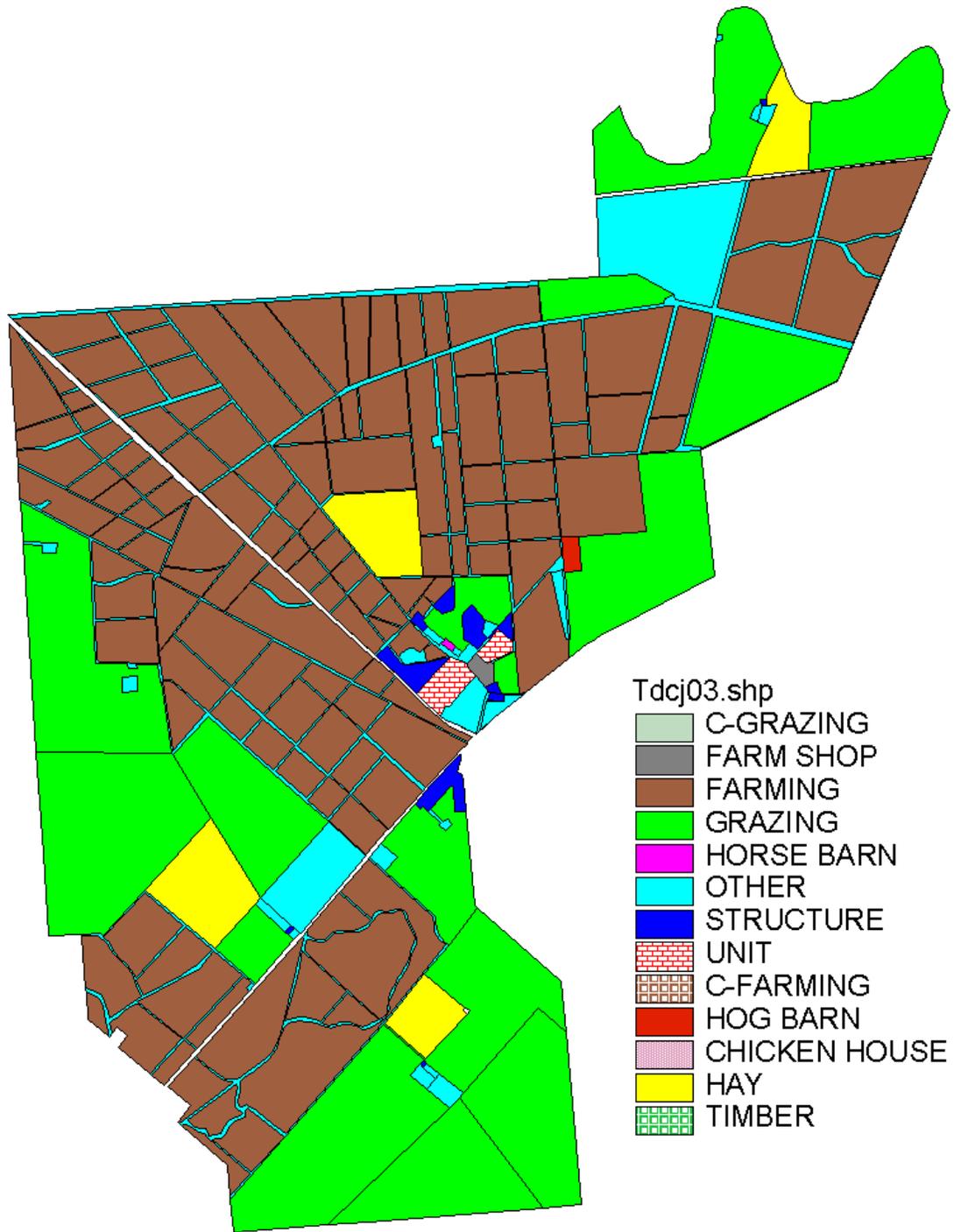
FY07

USE

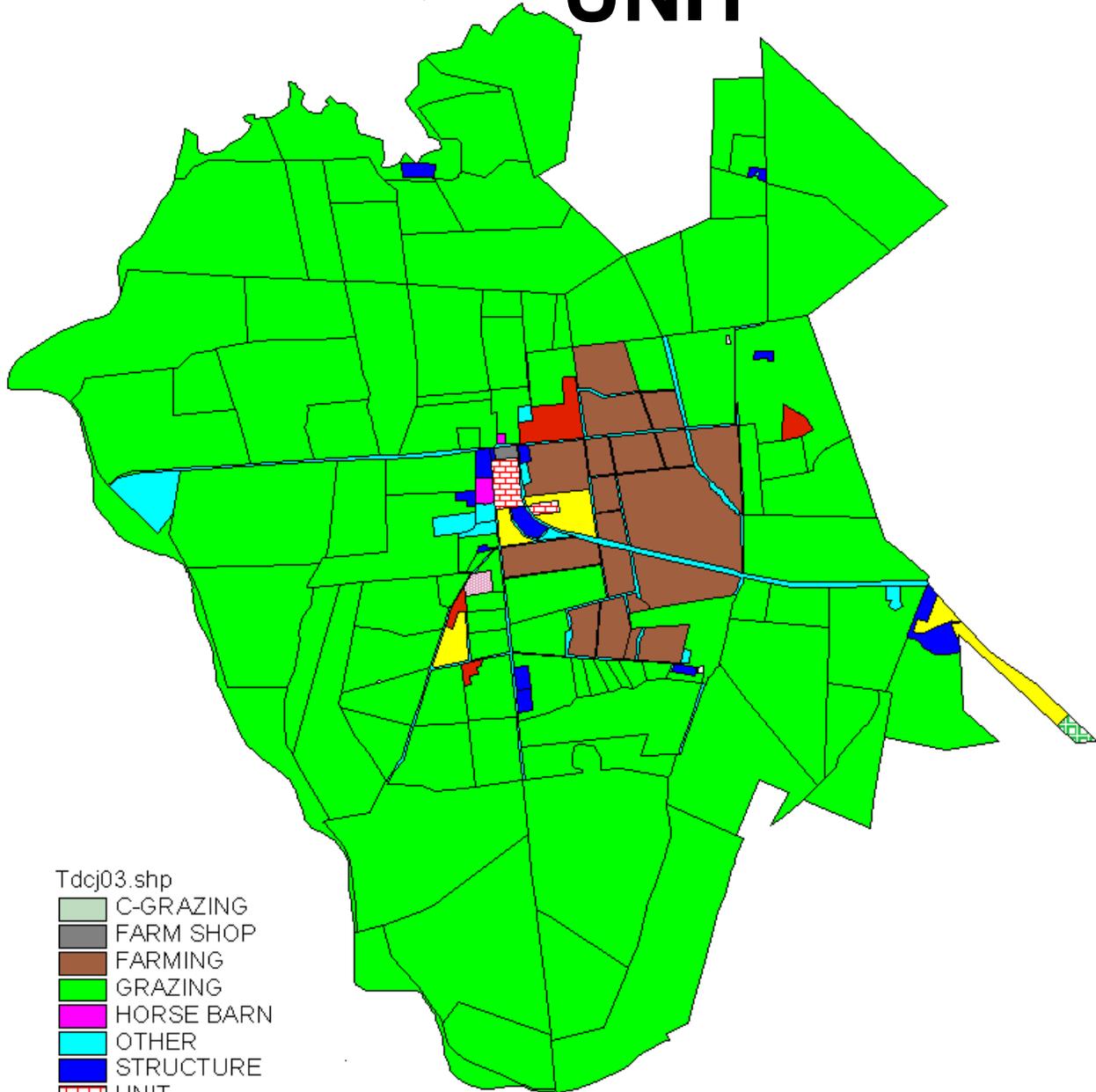
-  FARMING
-  GRAZING
-  OTHER



CLEMENS UNIT

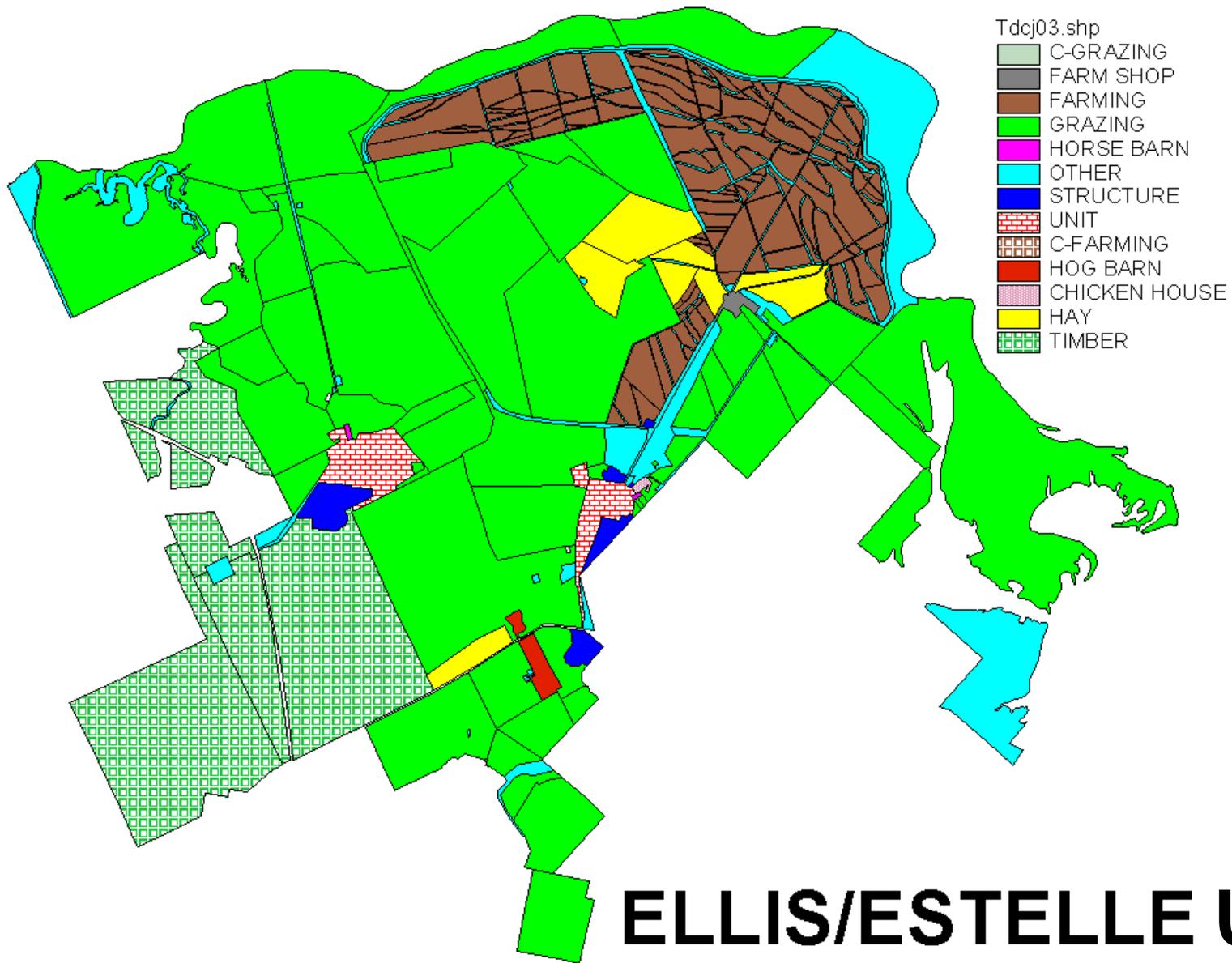


EASTHAM UNIT

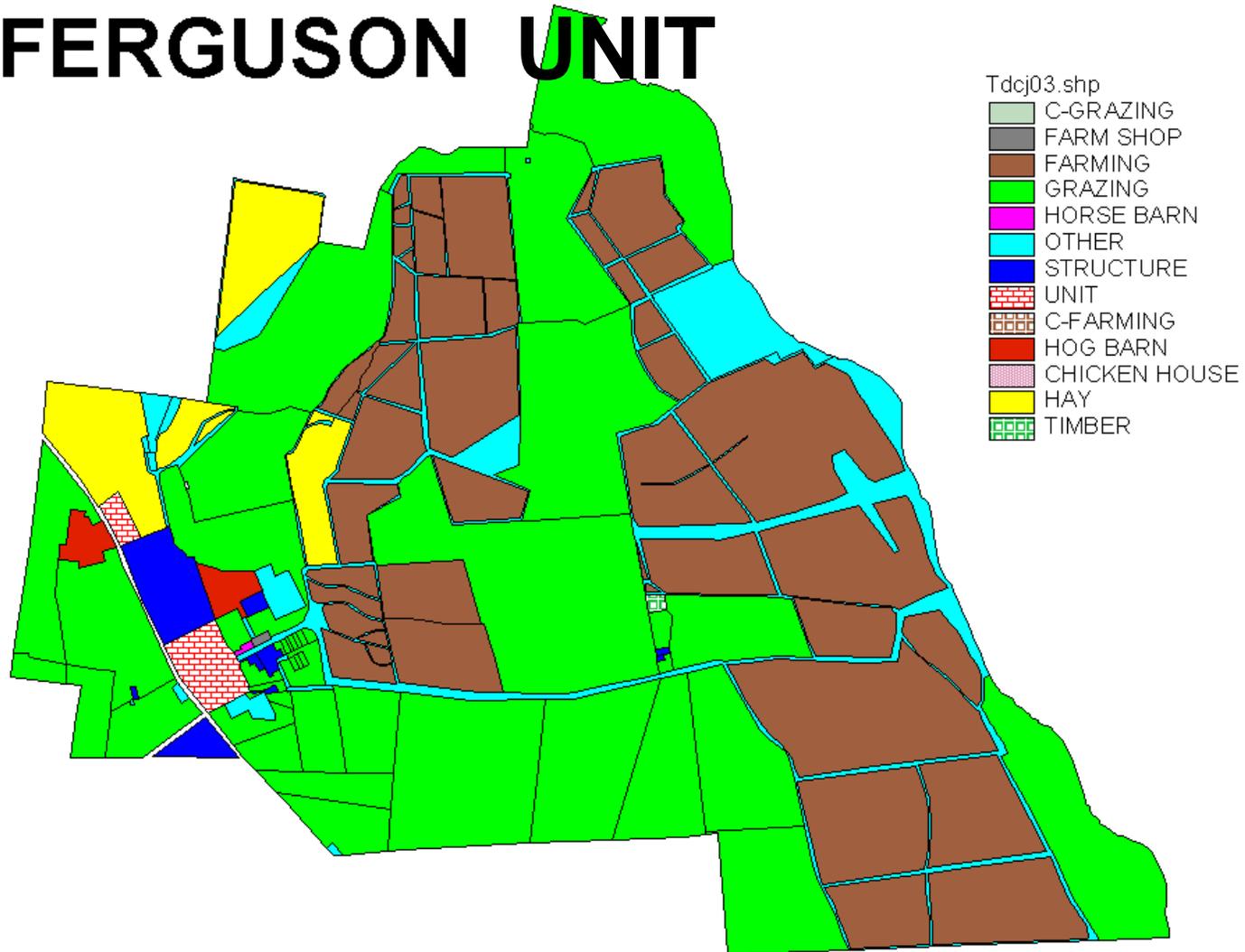


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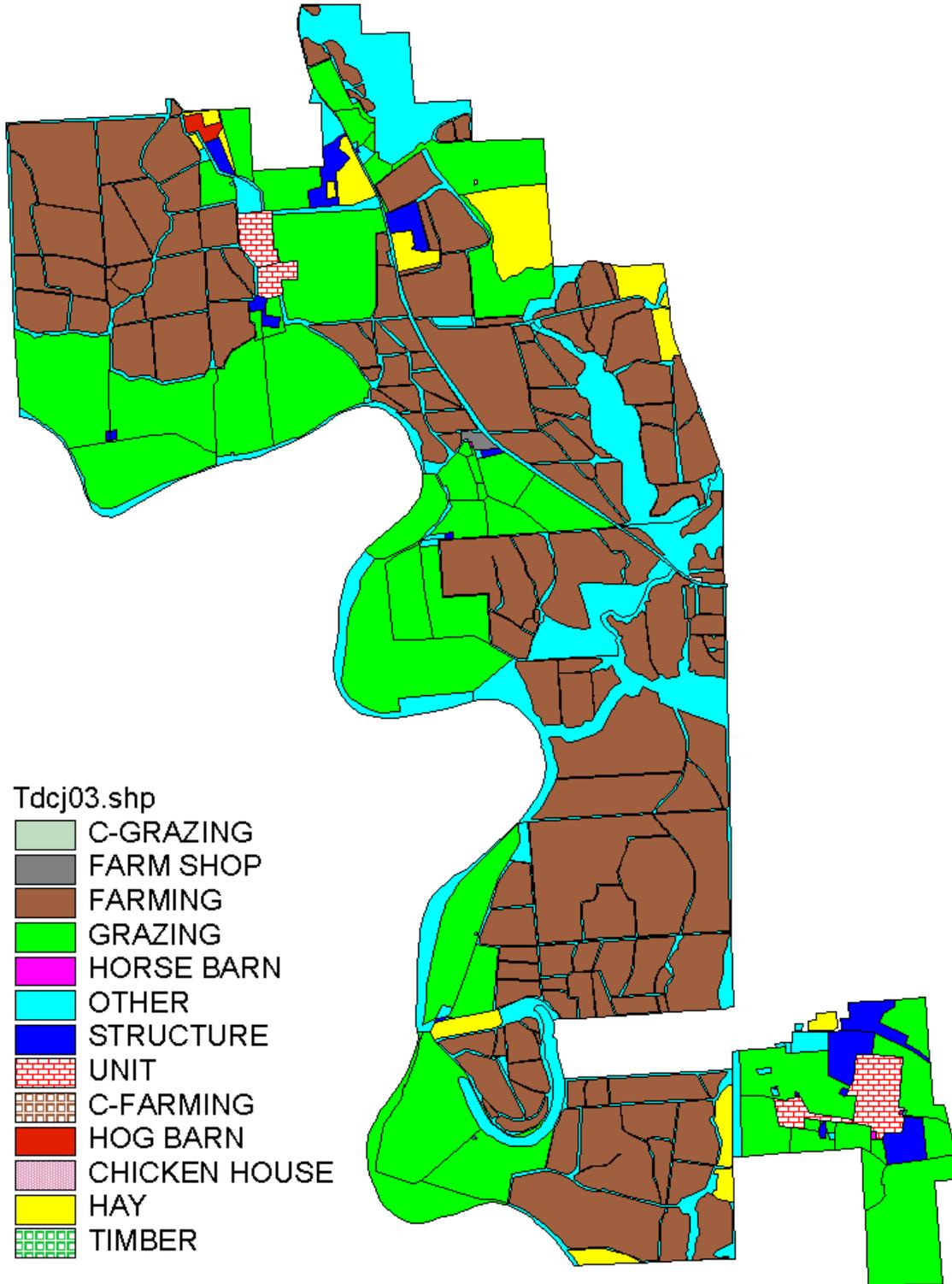
-  C-GRAZING
-  FARM SHOP
-  FARMING
-  GRAZING
-  HORSE BARN
-  OTHER
-  STRUCTURE
-  UNIT
-  C-FARMING
-  HOG BARN
-  CHICKEN HOUSE
-  HAY
-  TIMBER

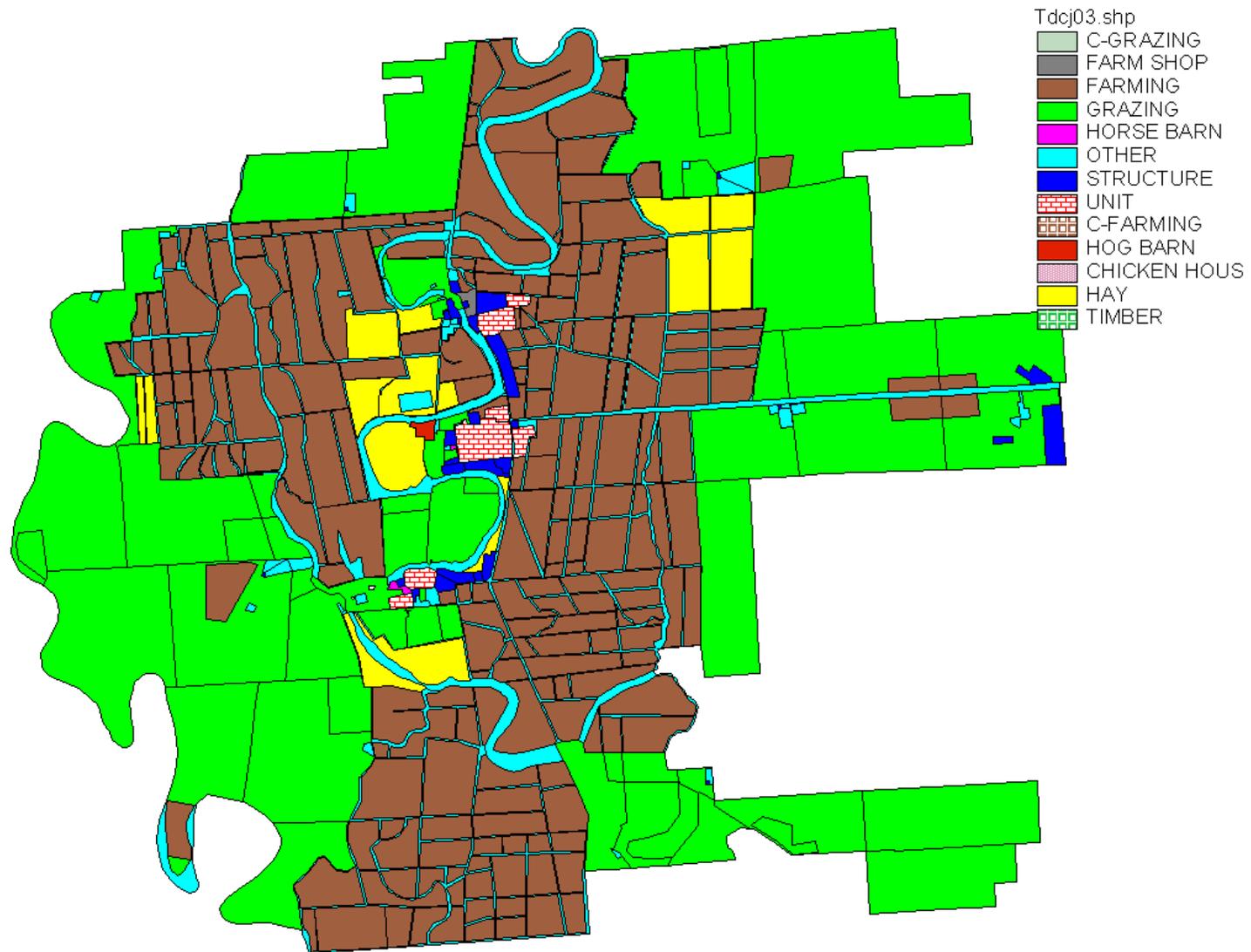


FERGUSON UNIT



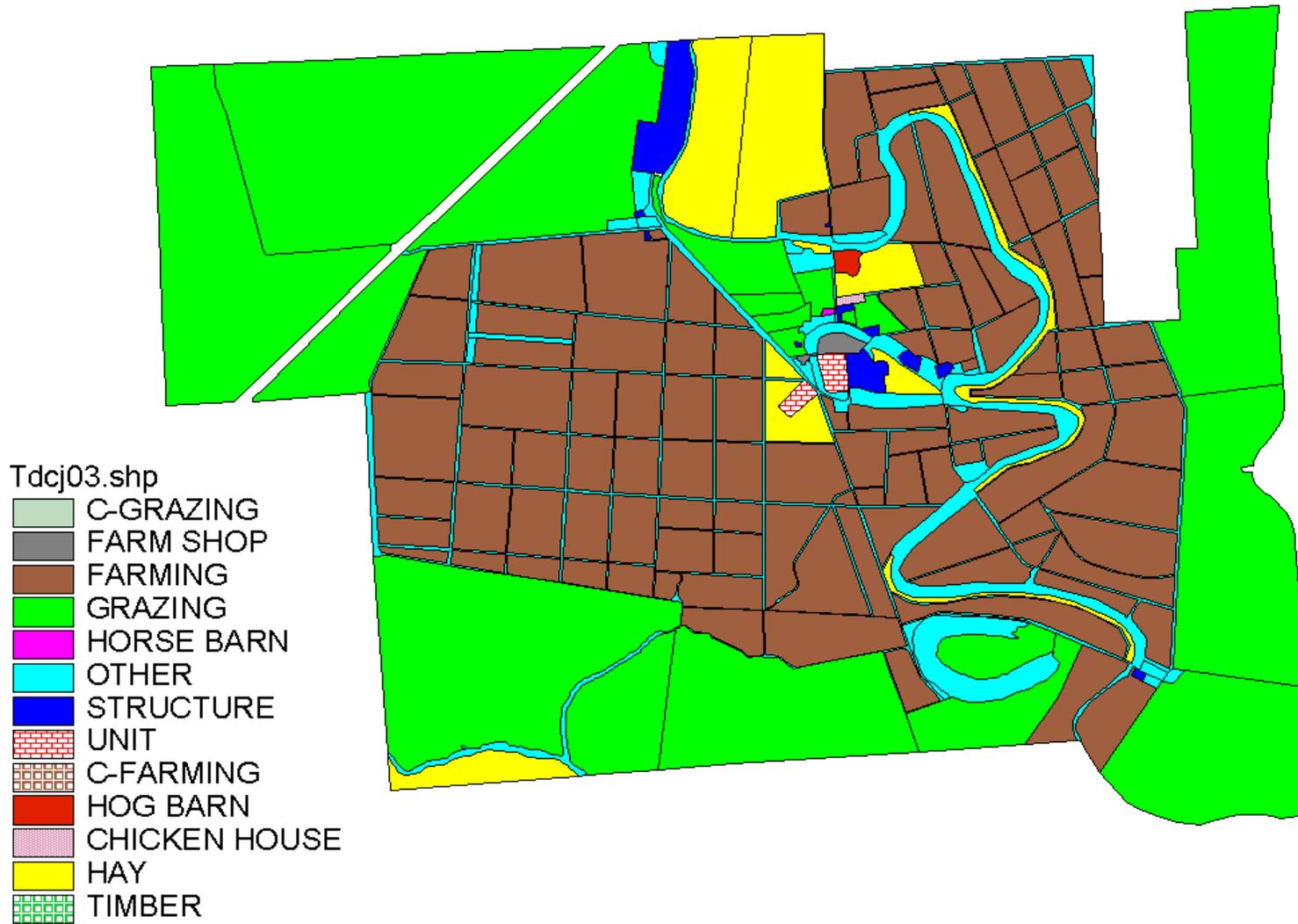
PACK/LUTHER UNITS





RAMSEY UNIT

SCOTT UNIT



SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF BIDDERS**K.1 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION****K.1.1 Definition**

- A. "Historically Underutilized Business (HUB)" means an entity with its principal place of business in this State that is:
1. A corporation formed for the purpose of making a profit in which fifty-one percent (51%) or more of all classes of the shares of stock or other equitable securities are owned by one (1) or more Economically Disadvantaged Persons who have a proportionate interest and actively participate in the corporation's control, operation and management;
 2. A sole proprietorship created for the purpose of making a profit that is completely owned, operated and controlled by an Economically Disadvantaged Person;
 3. A partnership formed for the purpose of making a profit in which fifty-one percent (51%) or more of the assets and interest in the partnership are owned by one (1) or more Economically Disadvantaged Persons who have a proportionate interest and actively participate in the partnership's control, operation, and management;
 4. A joint venture in which each entity in the venture is a HUB, as determined under another paragraph of this subdivision; or
 5. A supplier contract between a HUB as determined under another paragraph of this subdivision and a prime Bidder under which the HUB is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods.
- B. "Economically Disadvantaged Person" means a person who is economically disadvantaged because of the person's identification as a member of a certain group including Black Americans, Hispanic Americans, Women, Asian Pacific Americans, Native Americans and Service-Disabled Veterans who has suffered the effects of discriminatory practices or other similar insidious circumstances over which the person has no control.

K.1.2 HUB Representation

The Bidder represents and certifies as part of its bid that it [] is, or [x] is not, a HUB certified by the Texas Statewide Support Services Division.

K.2 CHILD SUPPORT REPRESENTATION

- A. Under Texas Family Code, Section 231.006, a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from State funds under a contract to provide property, materials or services.
- B. Governmental entities and any business entity, including a non-profit corporation, that does not have a majority shareholder who is a natural person capable of being a child support obligor, are not subject to Texas Family Code, Section 231.006.

K.5 PREFERENCE CLAIM

In accordance with Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D, Division 2, Rule 20.306, the Bidder shall check below if claiming a preference. If the appropriate line is not marked, a preference will not be granted unless other documents included in the bid show a right to the preference.

K.5.1 Source and Specification Preferences

- Products of persons with mental or physical disabilities.
- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel.
- Energy efficient products.
- Rubberized asphalt paving material.
- Recycled motor oil and lubricants.

K.5.2 Tie-Bid Preferences

- Goods produced or offered by a Texas bidder that is owned by a Texas Resident Service-Disabled Veteran.*
- Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas Resident Service-Disabled Veteran.*
- Agricultural products produced or grown in Texas.
- Agricultural products or services offered by Texas bidders.*
- Services offered by a Texas bidder that is owned by a Texas Resident Service-Disabled Veteran.*
- Services offered by a Texas bidder that is not owned by a Texas Resident Service-Disabled Veteran.*
- Texas vegetation native to the region.
- USA produced supplies, materials, equipment or agricultural products.

K.5.3 Additional Preferences

- Products produced at facilities located on formerly contaminated property.
- Products and services from economically depressed or blighted areas.
- Vendors that meet or exceed air quality standards.
- Recycled or reused computer equipment of other manufacturers.
- Foods of higher nutritional value (for consumption in a public cafeteria only).

*By signing this proposal, the Bidder certifies that if a Texas address is shown as the address of the Contractor, the Contractor qualifies as a Texas resident bidder as defined in Texas Government Code, Section 2155.444(c).

K.6 REPRESENTATIONS OF BIDDER

The Bidder represents and warrants to and for the benefit of the Department, with the intent that the Department will rely thereon for the purposes of entering into this Contract, as follows:

K.6.1 Organization and Qualification

If the Bidder operates as a corporation incorporated under the laws of any State outside Texas, it is duly qualified to do business as a foreign corporation in good standing in Texas.

K.6.2 Authorization

This Contract has been duly authorized, executed and delivered by the Bidder and, assuming due execution and delivery by the Department, constitutes a legal, valid and binding agreement enforceable against the Bidder in accordance with its terms.

K.6.3 No Violation of Agreements, Articles of Incorporation or Bylaws

The consummation of the transactions contemplated by this Contract and the fulfillment of the terms hereof will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license or permit or other agreement or instrument to which the Bidder is a party or by which its properties are bound, or any order, rule or regulation of any court or any regulatory body, administrative agency or other governmental body applicable to the Bidder or any of its properties, except any such conflict, breach, or default which would not materially and adversely affect the Bidder's ability to perform its obligations under this Contract, and will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under, the Articles of Incorporation (or other corresponding charter document) or Bylaws of the Bidder.

K.6.4 No Defaults under Agreements

The Bidder is not in default, nor is there any event in existence which, with notice or the passage of time or both, would constitute a default by the Bidder under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license or permit or other agreement or instrument to which it is a party or by which any of its properties are bound and which default would materially and adversely affect the Bidder's ability to perform its obligations under this Contract.

K.6.5 Compliance with Laws

Neither the Bidder nor its officers and directors purporting to act on its behalf have been advised or have reason to believe that the Bidder or such officers and directors have not been conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which the Bidder is conducting business, including all safety laws and laws with respect to discrimination in hiring, promotion or pay of employees or other laws affecting employees generally, except where failure to be in compliance would not materially and adversely affect the Bidder's ability to perform its obligations under this Contract.

K.6.6 No Litigation

- A. The Bidder certifies that there is not now pending, or to its knowledge threatened, any action, suit or proceeding to which the Bidder or any of its employees, are a party, before or by any court or governmental agency or body, which may result in any material adverse change in the Bidder's ability to perform its obligations under this Contract, or any such action, suit or proceeding related to environmental or civil rights matters.

- B. The Bidder further certifies that no labor disturbance by the employees of the Bidder exists or is imminent which may be expected to materially and adversely affect the Bidder's ability to perform its obligations under this Contract.
- C. Prior to the Department making an award of this Contract, the Department may require Bidder being considered for the award to recertify the representations set forth above. The Department, in its sole discretion, may disqualify any Bidder that in the opinion of the Department is a party, or who has any employees that are a party, to any action, suit or proceeding that may result in any material adverse change in Bidder's ability to perform its obligations under this Contract.
- D. During the Contract Term, to include extensions hereof, the Bidder shall notify the Department in writing within five (5) days of the Bidder having received knowledge of any actions, suits or proceedings filed against the Bidder, or any of its employees, or to which the Bidder, or any of its employees, are a party, before or by any court or governmental agency or body, which:
 - 1. May result in any material adverse change in the Bidder's ability to perform its obligations under this Contract;
 - 2. Filed in any federal court, state court, or federal or state administrative hearing within the State of Texas regardless as to any anticipated material adverse change in the Bidder's ability to perform its obligations under this Contract;
 - 3. Is brought by or on behalf of a State of Texas Offender regardless as to any anticipated material adverse change in the Bidder's ability to perform its obligations under this Contract; and
 - 4. The Contractor shall provide in writing, to the Contract Specialist, a quarterly report listing litigation identified in the above requirements.

K.6.7 Taxes

- A. The Bidder has filed all necessary federal, state and foreign income and franchise tax returns and has paid all taxes as shown to be due thereon.
- B. The Bidder has no knowledge of any tax deficiency which has been or might be asserted against it and which would materially and adversely affect the Bidder's ability to perform its obligations under this Contract.
- C. The Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of the Contractor or its employees.

K.6.8 Disclosure

There is no material fact which materially and adversely affects or in the future will (so far as the Bidder can now reasonably foresee) materially and adversely affect its ability to perform its obligations under this Contract which has not been accurately set forth in this Contract or otherwise accurately disclosed in writing to the Department by the Bidder prior to the date hereof.

K.6.9 No Collusion

- A. The Bidder represents and certifies its employees, agents and representatives have not and shall not discuss or disclose the terms of their bid and its submission or response thereto with any third party other than persons or entities, which the Bidder engaged to assist it with respect to such response or submission.
- B. Neither the Bidder nor the firm, corporation, partnership or institution represented by the Bidder or anyone acting for such firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly, the bid made to any competitor or any other person engaged in such line of business.

K.6.10 Ethics**K.6.10.1 Conflict of Interest**

Pursuant to Texas Government Code, Section 572.051, any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established. Texas Government Code, Section 572.051, outlines the ethical standards required of State officers and employees who interact with public purchasers in the conduct of State business.

Specifically, a Department employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the State; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Entities who are interested in seeking business opportunities with the state must be mindful of these restrictions when interacting with public purchasers of the Department or purchasers of other State agencies.

K.6.10.2 Disclosure of Interested Parties

In accordance with Texas Government Code 2252.908, a governmental entity or state agency may not enter into a contract valued at \$1,000,000.00 or greater with a business entity unless the business entity, in accordance with Texas Administrative Code, Title 1, Part 2, Chapter 46, Rules 46.1, 46.3 and 46.5, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

The disclosure of interested parties must be submitted on a form, and in a manner, prescribed by the Texas Ethics Commission. The Disclosure of Interested Parties Form (Form 1295) and instructions may be found at: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

K.6.10.3 No Gratuities

The Bidder represents that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal.

K.6.11 No Compensation

Pursuant to Texas Government Code, Section 2155.004 the Bidder has not received compensation for participation in the preparation of the specifications for this bid. Under Texas Government Code, Section 2155.004, the Bidder certifies that the individual or business entity named in this Solicitation or the Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and Payment withheld if this certification is inaccurate.

K.6.12 Contracting with Executive Head of State Agency

- A. The Bidder represents and certifies that they are in compliance with Texas Government Code, Section 669.003, relating to contracting with the executive head of a State Agency.
- B. If Texas Government Code, Section 669.003 applies, Bidder shall complete the following information in order for the Bid to be evaluated:

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Date of Employment with Bidder: _____

K.6.13 Limitation on Employment of Former State Officers

The Bidder represents that they are in compliance with Texas Government Code, Section 572.069 relating to employment of a former state officer or employee. A former State officer or employee of the Department who during the period of State service or employment participated on behalf of the Department on a procurement or contract negotiation involving a business entity may not accept employment from that business entity before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.

K.6.14 Notification

If any of the information provided in the above representations changes during the term of this Contract, the Contractor shall submit an updated representation as soon as is reasonably possible.

K.6.15 Suspension, Debarment and Terrorism

The Department is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM, <https://www.sam.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

K.6.16 Prohibition of a State Agency Contracting with Companies that Boycott Israel

The Contractor certifies that they are in compliance with Texas Government Code, Chapter 2270 relating to the prohibition of a State Agency contracting with companies that boycott Israel or boycotts Israel during the term of the Contract. The Contractor certifies that the individual or business entity named in this proposal or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and Payment withheld if this certification is inaccurate.

K.6.17 Prohibition of a State Agency Contracting with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations

The Contractor certifies that they are in compliance with Texas Government Code, Chapter 2252.152 relating to the prohibition of a State Agency contracting with companies that are engaged in business with Iran, Sudan, or foreign terrorist organizations. The Contractor certifies that the individual or business entity named in this proposal or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and Payment withheld if this certification is inaccurate.

K.6.18 Violation of Federal Law Relating to Reconstruction Efforts as a Result of Hurricanes Rita, Katrina or any Other Disaster After September 24, 2005

Pursuant to Texas Government Code, Section 2261.053, a State Agency may not accept a proposal or award a contract, including a contract for which purchasing authority is delegated to a State Agency, that includes proposed financial participation by a person who, during the five (5) year period preceding the date of the proposal or award, has been convicted of violating a federal law or assessed a penalty in a federal, civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricane Rita, Katrina or any other disaster occurring after September 24, 2005. Under Texas Government Code, Section 2261.053, the Contractor certifies that the individual or business entity named in this proposal or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and Payment withheld if this certification is inaccurate.

K.6.19 Deceptive Trade Practices; Unfair Business Practices

The Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice violations under Texas Business and Commerce Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that the Contractor has not been found to be liable for such practices in such proceedings. The Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

K.7 REPRESENTATIONS OF THE DEPARTMENT

The Department represents and warrants to and for the benefit of the Bidder with the intent that the Bidder will rely thereon for the purposes of entering into this Contract as follows:

K.7.1 Authorization

The Department has the requisite power to enter into this Contract and perform its obligations thereunder and by proper action has duly authorized the execution, delivery and performance hereof.

K.7.2 No Violation of Agreements

The consummation of the transactions contemplated by this Contract and the fulfillment of the terms hereof will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under any indenture, mortgage, deed of trust, lease, loan agreement, security agreement, contract or other agreement or instrument to which the Department is a party or by which its properties are bound, or any order, rule or regulation of any court or any regulatory body, administrative agency or other governmental body applicable to the Department or any of its properties, except any such conflict, breach or default which would not materially and adversely affect the Department's ability to perform its obligations under this Contract.

K.7.3 Disclosure

There is no material fact which materially and adversely affects or in the future will (so far as the Department can now reasonably foresee) materially and adversely affect its ability to perform its obligations under this Contract or which might require changes in or additions to the Services required under this Contract that would increase the cost to the Bidder of providing such Services, which has not been accurately set forth in this Contract or otherwise accurately disclosed in writing to the Bidder by the Department prior to the date hereof.

K.8 PAYEE IDENTIFICATION NUMBER

The Payee Identification Number is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. The Bidder shall provide its Payee Identification Number in the space provided below. If this number is not known, the Bidder shall provide the Federal Taxpayer Identification Number.

Payee Identification Number: _____ or

Federal Taxpayer Identification Number: 74-1763993 .

K.9 POINT OF CONTACT

The Bidder shall provide the name, title, phone number, fax number, address and e-mail address of a point-of-contact for questions concerning the submitted proposal.

Name: Andy Christian Title: _____

Phone Number: (979) 922-8623 Fax Number: (979) 922-1023

Street Address: 2111 County Road 33

City: Danbury State: TX Zip Code: 77534

E-mail Address: garrettflyers@gmail.com

K.10 CERTIFICATION

To be completed by the Bidder: (The Bidder must check or complete all appropriate boxes or blanks in the Representations and Certifications, on the preceding pages). The Representations and Certifications must be executed below by an individual authorized to bind the Bidder.

The Bidder makes the foregoing Representations and Certifications as part of its bid.

Garrett Flying Service Inc.
Name of Bidder

696-AG-19-B017
Solicitation No.

Andy Christian
Signature of Authorized Individual

4-3-19
Date

David Andrew Christian
Typed Name of Authorized Individual

Note: The penalty for making false statements shall void the submitted bid or any resulting Contracts, and the Bidder shall be removed from all bid lists.

SOLICITATION, OFFER AND AWARD

1. CONTRACT NO.	2. SOLICITATION NO. 696-AG-19-B017	3. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFO) <input type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED March 18, 2019
-----------------	---------------------------------------	---	----------------------------------

SOLICITATION

5. Sealed bids will be received by the Department until 3:00 p.m. local time on Monday, April 8, 2019 , and submitted to: Attention: 696-AG-19-B017 Texas Department of Criminal Justice Contracts and Procurement Department Client Services and Governmental Contracts Branch Two Financial Plaza, Suite 525 Huntsville, Texas 77340	6. FOR INFORMATION CONTACT: Steven Tilley, CTPM, CTCM Contract Specialist PHONE: (936) 437-7115 FAX: (325) 223-0310 E-MAIL: steven.tilley@tdcj.state.gov
--	--

BID (Must be fully completed by Bidder)

7. DISCOUNT FOR PROMPT PAYMENT: →	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	__ CALENDAR DAYS %
8. ACKNOWLEDGMENT OF AMENDMENTS: <i>(The bidder acknowledges receipt of amendments to the SOLICITATION for Bidders and related documents numbered and dated:</i>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
9. NAME AND ADDRESS OF BIDDER: →			10. NAME AND TITLE OF AUTHORIZED TO SIGN BID (<i>Type or Print</i>)	
11. TELEPHONE NO. (<i>Include area code</i>)	12. SIGNATURE		13. BID DATE	

TO BE COMPLETED AT TIME OF AWARD

Document Type: 2S This award consummates the contract which consists of the following documents: (a) the State's solicitation and solicitation amendments and (b) this award. The total funding for the Base Period of this Contract (May 1, 2019 through August 31, 2019) shall not exceed \$
Texas Department of Criminal Justice By: _____ Jerry McGinty Title: Chief Financial Officer Date: _____

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SECTION A - DEFINITIONS

The following terms used in this Contract will, unless the context indicates otherwise, have the meanings set forth below:

Authorized Representative means the person designated in writing to act for and on behalf of a party of this Contract, which designation has been furnished to the other party hereto as described in Section G.2.1.

Biennium means any of the two-year periods beginning on September 1 and ending on August 31 of odd numbered years, which periods are used for budgetary purposes by the State of Texas.

Commencement Date means the date on which the Contractor shall begin providing services. For the purpose of this Contract, that date is May 1, 2019.

Contract Monitor means the Department employee that is responsible for technical administration of this Contract. See Section G.2.3 for full explanation.

Contract Term means the duration of this Contract as specified in Section F.1.

Contractor means the individual, partnership or corporation who performs services under this Contract.

Department means The Texas Department of Criminal Justice (TDCJ).

Department Policy/Policies means all written policies, procedures, standards, guidelines, directives and manuals of the Department and as may be amended from time to time, which the Department has made available to the Contractor and with which the Contractor has an affirmative obligation to be and remain familiar.

Event of Default means any of the events or circumstances described in Section I.3.

Fiscal Year means any of the one (1) year periods beginning September 1 and ending August 31, which periods are used for annual budgetary purposes by the State of Texas.

Non-Appropriation means the failure by the Legislature of the State, as part of its budgetary process, to appropriate money to be used for the payments due hereunder.

Offender means a person under the supervision of the Texas Department of Criminal Justice.

Payment or Payments means the amount(s) agreed to be paid by the Department to the Contractor for Services under this Contract.

PD means the Texas Department of Criminal Justice's Personnel Directives.

Services means performance by the Contractor providing aerial spraying services in accordance with the terms and conditions listed hereunder.

TBCJ means the Texas Board of Criminal Justice.

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 SERVICES AND PRICES/COSTS

B.1.1 Services Being Acquired

The Contractor shall, in accordance with the terms of this Contract, provide all necessary personnel and Services and otherwise do all things necessary for, or incidental to, providing the aerial spraying Service(s) listed hereunder.

B.1.2 Pricing Instructions

Enter your bid in the spaces provided below for each sub-category for price per acre/price per acre application.

B.2 PRICING SCHEDULE

B.2.1 Application to Southern Area Farms

Contract Line Item Number (CLIN) 001, Sub-Categories A-F and CLIN 002, Sub-Categories A-C

The Department contemplates the use of aircraft service during the 2019-2020 cropping season for approximately (1) zero to 3,500 acres of cotton; (2) zero to 14,000 acres of corn and grain sorghum; and (3) zero to 3,700 acres of vegetables. The number of applications will be determined by weed and/or insect infestations. The Contractor shall be aware that the Department uses state-owned ground rigs to the fullest extent possible. The Department’s Southern Area Farms are:

- Clemens Farm, Brazoria County, Brazoria, Texas
- Darrington Farm, Brazoria County, Rosharon, Texas
- Ramsey Farm, Brazoria County, Rosharon, Texas
- Scott Farm, Brazoria County, Angleton Texas

001 - Category I – Liquid Application of Insecticides, Herbicides, Fungicides, Fertilizers, and/or Defoliant

001A	1 Gallon Total Liquid	\$_____	Per Acre Application
001B	2 Gallons Total Liquid	\$_____	Per Acre Application
001C	3 Gallons Total Liquid	\$_____	Per Acre Application
001D	5 Gallons Total Liquid	\$_____	Per Acre Application
001E	10 Gallons Total Liquid	\$_____	Per Acre Application
001F	Ultra Low Volume (ULV)	\$_____	Per Acre Application

002 – Category II – Application of Granular Fertilizer

The Department contemplates the use of aerial application of granular fertilizer at various rates per acre to approximately zero to 6,700 acres of various croplands.

- 002A 100 – 150 pounds per acre \$_____ Per Acre Application
- 002B 151 – 200 pounds per acre \$_____ Per Acre Application
- 002C 201 – 250 pounds per acre \$_____ Per Acre Application

B.2.2 Applications to Pack/Luther Unit, Grimes County, Navasota, Texas and Buffalo Ranch, Burleson County, Snook, Texas

CLIN 003, Sub-Categories A-E and CLIN 004 A-C

The Department contemplates the use of aircraft service during the cropping season of 2019-2020 for approximately (1) zero to 2,500 acres of grain sorghum; (2) zero to 5,500 acres of corn; (3) zero to 650 acres of vegetables; and (4) zero to 2,700 acres of cotton. The number of applications will be determined by weed and insect infestation.

003 - Category III - Liquid Pesticide Application

- 003A 1 gallon total liquid \$_____ Per Acre Application
- 003B 2 gallons total liquid \$_____ Per Acre Application
- 003C 3 gallons total liquid \$_____ Per Acre Application
- 003D 5 gallons total liquid \$_____ Per Acre Application
- 003E Ultra Low Volume (ULV) \$_____ Per Acre Application

The Department contemplates the use of aerial applications of granular fertilizer at various rates per acre to approximately zero to 1,800 acres of various croplands.

004 - Category IV - Granular Fertilizer Application

- 004A 100 - 150 pounds per acre \$_____ Per Acre Application
- 004B 151 - 200 pounds per acre \$_____ Per Acre Application
- 004C 201 - 250 pounds per acre \$_____ Per Acre Application

B.2.3 Application to Central Area Farms

CLIN 005, Sub-Categories A-E and CLIN 006 Sub-Categories A-C

The Department contemplates the use of aircraft service during the cropping season of 2019-2020 for approximately (1) zero to 1,400 acres of cotton; (2) zero to 2,600 acres of corn and grain sorghum; and (3) zero to 7,500 acres of pastureland. The number of applications will be determined by weed and insect infestations. The Department's central area farms are:

Eastham Farm, Houston County, Love Lady, Texas
 Ellis/Estelle Farm, Walker County, Huntsville, Texas
 Ferguson Farm, Madison County, Midway, Texas

005 - Category V - Liquid Application of Insecticides, Herbicides, Fungicides, Fertilizers, and Defoliant

005A	1 gallon total liquid	\$ _____	Per Acre Application
005B	2 gallons total liquid	\$ _____	Per Acre Application
005C	3 gallons total liquid	\$ _____	Per Acre Application
005D	5 gallons total liquid	\$ _____	Per Acre Application
005E	Ultra Low Volume (ULV)	\$ _____	Per Acre Application

The Department contemplates the use of aerial application of granular fertilizer at various rates per acre to approximately zero to 6,000 acres of various croplands.

006 - Category VI - Granular Fertilizer Application

006A	100 - 150 pounds per acre	\$ _____	Per Acre Application
006B	151 - 200 pounds per acre	\$ _____	Per Acre Application
006C	201 - 250 pounds per acre	\$ _____	Per Acre Application

B.2.4 Application to Northern Area Farms

CLIN 007, Sub-Categories A-E; CLIN 008, Sub-Categories A-C; and CLIN 009

The Department contemplates the use of aircraft service during the cropping season of 2019 – 2020 for approximately zero to 1,550 acres of grain sorghum and corn. The units are adjacent and use a common landing strip located on the Coffield Farm.

Beto Farm, Anderson County, Tennessee Colony, Texas
 Coffield Farm, Anderson County, Tennessee Colony, Texas

007 - Category VII - Liquid Application of Insecticides, Herbicides, Fungicides, and Fertilizers to Coffield and Beto Farms

007A	1 gallon total liquid	\$_____	Per Acre Application
007B	2 gallons total liquid	\$_____	Per Acre Application
007C	3 gallons total liquid	\$_____	Per Acre Application
007D	5 gallons total liquid	\$_____	Per Acre Application
007E	Ultra Low Volume (ULV)	\$_____	Per Acre Application

CLIN 008, Sub-Categories A-C and 010

The Department contemplates the use of aerial application of granular fertilizer at various rates per acre to approximately zero to 3,000 acres on the Coffield and Beto Farms.

008 - Category IX - Granular Fertilizer Application for Coffield and Beto Farms (Northern Farms)

008A	100 - 150 pounds per acre	\$_____	Per Acre Application
008B	151 - 200 pounds per acre	\$_____	Per Acre Application
008C	201 - 250 pounds per acre	\$_____	Per Acre Application

The Department contemplates the use of aerial service for seeding a sorghum-sudan hybrid to approximately zero to 1,400 acres at a seeding rate of 15 pounds per acre on the Northern Area Farms. This seeding should take place during mid to late April.

009 - Category X - Seeding Forage Sorghum on Northern Area Farms

009	Seeding forage sorghum	\$_____	Per Acre Application
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B.2.5 Application to Northern & Central Area Farms

The Department contemplates the use of aircraft service for applications of regulated herbicides and picloram to approximately (1) zero to 8,500 acres on the Coffield and Beto Farm; and (2) zero to 5,000 acres on the Eastham Farm. Aerial applicators bidding on this Contract must be bonded and registered for topical application of hormone type herbicides or plant regulators with the Texas Department of Agriculture (TDA). The TDA does not deduct acres treated from the Contractor's permits, but does require a report of acres flown. Therefore, do not include the cost of the permit acres because state-owned land is being treated.

Coffield and Beto Farms are located in Anderson County, Tennessee Colony, Texas. This county is non-regulated. The Eastham Unit is in the regulated portion of Houston County. There will be cotton planted on the Department land directly across the river from the Eastham Unit.

010 - Category VIII - Liquid Application of Regulated Herbicides and Picloram to Coffield, Beto, and Eastham Units (Application is at 5 gallons total liquid per acre)

010A	Coffield and Beto	\$ _____	5 Gallons per Acre Application
010B	Eastham	\$ _____	5 Gallons per Acre Application

Height of application will be below treetop level while spraying forest right-of-way where possible. All decisions concerning height of flight, rates, and cancellation of spraying due to environmental conditions will be final. All applications will be made under direct supervision of either the Department's Farm Manager or the Manager of Livestock for the specified unit.

B.2.6 Application to All Units

The following four (4) categories contain application requirements which are common to all units:

CLIN 011, Sub-Categories A-D, CLIN 012, Sub-Categories A-D, CLIN 013, Sub-Categories A-D and CLIN 014, Sub-Categories A-D

The Department contemplates the use of aerial service for seeding rye grass to approximately (1) zero to 2,000 acres on Coffield - Beto (Northern); (2) zero to 3,000 acres on Ellis/Estelle, Ferguson, Eastham (Central); (3) zero to 1,200 acres on Darrington, Ramsey, Scott and Clemens (Southern); and (4) zero to 400 acres on Pack/Luther. This is a total of 6,600 acres throughout the system. Seeding rate will be 10, 15, 20 or 25 pounds per acre. In most cases the acreage on these farms will not be one large block; there may be several smaller fields. Swath will be a maximum of 45 feet. The Contractor must supply ground-loading equipment.

011 - Category XI - Seeding Rye Grass

011A	Northern Area Farms - 10 pounds per acre	\$ _____	Per Acre
	Northern Area Farms - 15 pounds per acre	\$ _____	Per Acre
	Northern Area Farms - 20 pounds per acre	\$ _____	Per Acre
	Northern Area Farms - 25 pounds per acre	\$ _____	Per Acre
011B	Central Area Farms - 10 pounds per acre	\$ _____	Per Acre
	Central Area Farms - 15 pounds per acre	\$ _____	Per Acre
	Central Area Farms - 20 pounds per acre	\$ _____	Per Acre
	Central Area Farms - 25 pounds per acre	\$ _____	Per Acre
011C	Southern Area Farms - 10 pounds per acre	\$ _____	Per Acre
	Southern Area Farms - 15 pounds per acre	\$ _____	Per Acre

Southern Area Farms - 20 pounds per acre	\$ _____ Per Acre
Southern Area Farms - 25 pounds per acre	\$ _____ Per Acre
011D Pack/Luther Unit and Buffalo Ranch 10 pounds per acre	\$ _____ Per Acre
Pack/Luther Unit and Buffalo Ranch 15 pounds per acre	\$ _____ Per Acre
Pack/Luther Unit and Buffalo Ranch 20 pounds per acre	\$ _____ Per Acre
Pack/Luther Unit and Buffalo Ranch 25 pounds per acre	\$ _____ Per Acre

The Department contemplates the use of aerial application of liquid fertilizer, at a rate of 13-1/2 gallons per acre to the following areas (1) zero to 100 acres on Northern Area Farms; (2) zero to 506 acres on Central Area Farms; (3) zero to 1,389 acres on Southern Area Farms; and (4) zero to 305 acres on Pack/Luther Unit.

This work will be primarily directed at small grains but could be needed on additional cropland.

012 - Category XII - Application of Liquid Fertilizer

012A	Northern Area Farms	\$ _____ Per Acre Application
012B	Central Area Farms	\$ _____ Per Acre Application
012C	Southern Area Farms	\$ _____ Per Acre Application
012D	Pack/Luther Unit and Buffalo Ranch	\$ _____ Per Acre Application

The Department contemplates the use of aerial service for seeding clover to approximately (1) zero to 600 acres on Coffield - Beto (Northern); (2) zero to 1,000 acres on Ellis/Estelle, Eastham, and Ferguson (Central); (3) zero to 1,000 acres on Darrington, Ramsey, Scott and Clemens (Southern); and (4) zero to 600 acres on Pack/Luther Unit.

013 - Category XIII - Seeding Clover

013A	Northern Area Farms	\$ _____ Per Acre Application
013B	Central Area Farms	\$ _____ Per Acre Application
013C	Southern Area Farms	\$ _____ Per Acre Application
013D	Pack/Luther Unit and Buffalo Ranch	\$ _____ Per Acre Application

The Department contemplates the use of aerial service for seeding common Bermuda grass to approximately (1) zero to 600 acres on Coffield - Beto (Northern); (2) zero to 600 acres on

Ellis/Estelle, Eastham, Ferguson (central); (3) zero to 600 acres on Darrington, Ramsey, Scott and Clemens (Southern); and (4) zero to 600 acres on Pack/Luther Unit.

014 - Category XIV - Seeding Common Bermuda Grass (seeding rate is seven (7) pounds per acre)

014A	Northern Area Farms	\$ _____	Per Acre Application
014B	Central Area Farms	\$ _____	Per Acre Application
014C	Southern Area Farms	\$ _____	Per Acre Application
014D	Pack/Luther Unit and Buffalo Ranch	\$ _____	Per Acre Application

B.3 PRICE INCREASES/DECREASES

The Contractor may submit a written request for a price increase to the Department no later than June 1 of each year. The Department will review the request and any change, both increase or decrease in price, will be based on the specified index as published by the Bureau of Labor Statistics, Washington, D.C. 20212, Region VI, 214-767-6970, Index Number WPU0571 - Fuels and related products and power, Gasoline. Baselines shall be the index announced for the month in which the bid was opened. The Department will permit unit price adjustments upward or downward when correlated with the price index specified herein, unless otherwise indicated. Upon review of the Department, if index has decreased, the Department may adjust unit price downward. Any price increase or decrease shall be made via unilateral modification signed by the Department's Chief Financial Officer with notification made to the Contractor.

SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 BACKGROUND

The Department requires a Contractor to perform aerial crop dusting, seeding and fertilizing applications to various units within the Department, as specified in Section B.2.

C.2 GENERAL DUTIES AND OBLIGATIONS

The Contractor shall provide the Services in accordance with applicable federal and state law, including all constitutional, legal and court ordered requirements, whether now in effect or hereafter effected or implemented. The Contractor shall comply with the Department’s policies, procedures, personnel directives and regulations during the Contract Term. The Contractor shall comply with the Department’s safety requirements and reporting procedures.

C.3 SPECIFIC DUTIES, OBLIGATIONS, AND EQUIPMENT

C.3.1 Aircraft, Equipment and Pilots

A. The Contractor shall use the following aircraft types and minimum horsepower to provide Services under this Contract.

<u>Aircraft</u>	<u>Horsepower</u>
Cessna Ag Waggon	230
Gruman Ag Cats	230
Piper Pawnee	235
Snows	450
Stearmans	450
Air Tractor	600

The Contractor shall provide a listing of the make, model, and boom length of the planes that will be utilized to perform Services under this Contract. The Contractor shall provide the Department a listing of the number of planes that will be available during the peak spraying period.

B. The Contractor, if providing Ultra Low Volume (ULV) work, shall have a boom equipped to do such work. Rotary atomizers, forced air atomizers and standard boom arrangements, which are capable of being adjusted for ULV work, shall be accepted.

C. The Contractor shall furnish a loader and loading vehicle with equipment capable of mixing chemicals before being loaded in the aircraft, unless otherwise approved from the Contract Monitor. On ULV work, it may be necessary to draw vegetable oil out of the Department’s holding tanks. Offender labor will not be used to open pesticide containers or load pesticides into mixing equipment or aircraft. The Contractor shall provide loading equipment for the loading of dry fertilizer into the plane.

D. All pesticide containers shall be triple rinsed by the Contractor in order to wash out settled residue.

- E. The Department will supply flaggers for seeding and granular fertilize applications only. All fields shall be hand-flagged, flagged with automatic flagger equipment, or Global Positioning System (GPS). The Contractor shall provide a description of the flagging system that the Contractor will be furnishing for all other applications.
- F. Landing strips on each unit will be designated at locations mutually agreeable between the Contractor and the Warden of the unit concerned.
- G. Commercial pilots shall have at least two (2) seasons of pest control flying totaling one hundred (100) or more hours.
- H. The Contractor shall provide the name, number of years of agriculture flying experience, and the Texas Department of Agriculture Commercial Applicator License number of each pilot assigned to provide Services under this Contract. The Contractor shall submit in writing to the Contract Monitor any additions to the pilots being utilized before the new pilot can provide Services on the Department's agriculture land. In the event of an emergency situation, the Contractor may contact the Contract Monitor in person or by telephone to use a new pilot and submit the written documentation within five (5) business days. The Department reserves the right to refuse the Contractor's use of a pilot who has not passed the required criminal background check and whose work has been documented to be inferior to the Department's requirements.

C.3.2 Application

- A. The Department will furnish materials (to include: seed, chemicals, fertilizer and water) to be applied.
- B. The Department's Entomologists and Farm Managers reserve the right to stop or delay spraying by the Contractor due to adverse weather conditions or faulty equipment.
- C. Conventional and ULV sprays are hereby designated as follows:
 - 1. Conventional - one (1) gallon total liquid or more per acre.
 - 2. ULV - one-half (1/2) to six (6) pints total liquid per acre.
- D. When a product label requires that a closed system be used when mixing and loading that product, the Contractor shall be required to furnish a closed system apparatus. Every effort will be made by the Department to notify the Contractor in advance when this system is required for an application.
- E. Swath width may vary with the type of aircraft or boom used. However, at all times, swath width shall be sufficiently tight as to give complete coverage of field being treated. The Department's Entomologists reserve the right to periodically check this coverage.

C.3.3 Employee's General Rules of Conduct

The Contractor shall comply with the Department's listing of PD-22, General Rules of Conduct and Disciplinary Action Guidelines for Employees, which is located on the TDCJ website at <https://www.tdcj.texas.gov/divisions/hr/hr-policy/pd-22.pdf> and PD-29, Sexual Misconduct with

Offenders, which is located on the TDCJ website at <https://www.tdcj.texas.gov/divisions/hr/hr-policy/pd-29.pdf>.

C.3.4 Work Schedule

The Department's Entomologists and Farm Managers will coordinate the date and time of Services.

C.3.5 Contractor's Employment Requirements

- A. For any Services performed under this Contract, the Contractor shall not employ any persons with a felony or misdemeanor (A, B or C) conviction without prior written approval of the Department. This includes any employee with a criminal history who is employed by the Contractor at the time of award. The Contractor shall comply with the Texas Department of Criminal Justice PD-75, Applicants With Pending Criminal Charges or Prior Criminal Convictions, which is located on the TDCJ website at <https://www.tdcj.texas.gov/divisions/hr/hr-policy/pd-75.pdf>, in determining eligibility for employment.
- B. Prior to award, a criminal background check shall be completed by the Department for each employee performing Services under this Contract. The results of the criminal background checks must be acceptable to the Department. Applicants with criminal convictions and or pending charges must meet PD-75, requirements. A nominal fee will be charged to the Contractor for these criminal background checks. An additional fee will be charged for any resubmission requests. The Contractor is responsible for conduct and behavior of all persons working on the Department's property and will ensure the Department's Policies are followed, should a violation occur, the Contractor shall take corrective action acceptable to the Department. The Contractor shall notify the Department of employees who resign while under investigation for inappropriate conduct and/or for violations of policies related to the Department security. The Contractor shall immediately notify the Department of any employee who has been arrested, indicted or charged with a criminal offense. Such employee shall not be permitted to return to duty until authorized to do so by the Department.
- C. The Contractor shall submit an annual criminal background check request to the Department for each employee performing Services under the terms of this Contract no later than August 1 of each year. A nominal fee will be charged to the Contractor for the annual criminal background checks. A copy of the annual background check shall be maintained in the employee's personnel file.

SECTION D – REQUIRED REPORTS

D.1 REPORTS REQUIRED FROM CONTRACTOR

DUE DATE	REPORT ITEM	AUTHORITY
OTHER		
Prior to Service Commencement and upon renewal or replacement.	Insurance Certificates and Policies.	Contract, Section H.1
Each Instance	Copy of each subcontract	Contract, Section H.2
Upon delivery of Services to appropriate farm office.	Invoices	Contract, Section G.4.A

Additional reports may be required from the Contractor during the course of the Contract.

SECTION E - INSPECTION AND ACCEPTANCE**E.1 INSPECTION AND ACCEPTANCE OF SERVICES**

- A. The Department and other government regulatory agencies have the right to inspect and test all Services called for by this Contract, to the extent practicable at all times and places during the Contract Term. The Department shall perform inspections in a manner that will not unduly interfere with the Contractor's performance of Services. The Contractor shall furnish, and shall require subcontractors to furnish, at no increase in the Contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- B. The designated Department representative that oversees the programmatic area will inspect and accept the work performed and Services delivered to ensure compliance with the Contract requirements insofar as the work is concerned. The Contract Monitor will determine the adequacy of performance by the Contractor in accordance with the terms and conditions of this Contract.
- C. If subject to the outcome of an audit or inspection, it is determined that the Contractor is in non-compliance with any provisions of this Contract and/or that money is owed to the Department by the Contractor, then the Department may exercise its rights of recovery of money owed as authorized in Section G.4.2 of this Contract.
 - 1. If any of the Services are non-compliant with the Contract requirements, as identified by the Department, the Contractor shall be notified describing the specific areas of non-compliance. The Contractor shall have a twenty (20) day period to file a written response detailing corrective action(s) taken to address all items of non-compliance. The response must include supporting documentation which verifies execution of corrective action(s) taken. Unless otherwise specified, or previously agreed to by the Department, the submission of a corrective action plan shall not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between the Contractor and the Department, no further action regarding such items shall be taken. Any areas of non-compliance shall be corrected within twenty (20) Days or by the date of the Department approved extension.
 - 2. If any of the Services are non-compliant with the Contract requirements, as identified by a government regulatory agency, the Contractor must resolve all items identified as non-compliant by the deadline established by the agency.
- D. Each load is subject to inspection by the Department. The amount of total liquid applied will be tabulated. If the amount of total liquid applied does not approximately equal the correct amount to be applied and the Contractor is determined to be at fault, the Department may terminate this Contract as an Event of Default (Section I.3.1). In addition, if the Contractor refuses to allow inspection of any loads, the Contractor will be asked to leave the unit immediately and a formal complaint and incident report will be put on file at Manufacturing, Agribusiness and Logistics headquarters. Such refusal of inspection may subject this Contract to termination as an Event of Default and may have an adverse effect on the Contractor's ability to obtain any future Department aerial spraying contracts.

E.2 INSPECTION BY STATE EMPLOYEES

The Contractor shall provide entry at all times by the TBCJ and the Department's authorized employees/agents for inspections and other official purposes. The Governor, members of the Legislature and all other members of the Executive and Judicial Departments of the State, as well as any other persons designated by the Department including Office of the Inspector General, shall be admitted to monitor the delivery of Services.

E.3 AUTHORITY TO AUDIT

- A. The Contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. The Contractor further agrees to cooperate fully with the SAO, or its successor, in the conduct of the audit or investigation, including providing all records requested.
- B. The Contractor shall ensure that this Clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.
- C. The Contractor shall reimburse the state of Texas for all costs associated with enforcing this provision.

E.4 AUDITS BY OTHER AGENCIES

- A. Upon receipt of an audit pertaining to the provision of services under this Contract that are conducted by agencies or organizations other than the Department, the Contractor shall provide copies thereof to the Department within thirty (30) days. The Contractor shall provide to the Department copies of responses to the audit within seven (7) days of issuance.
- B. The Contractor is to retain all original audits that are conducted by other agencies for a period of seven (7) years from close of audit. If those records are still in their retention period at the termination of the Contract, all originals must be physically transferred to the Department.

E.5 FRAUD, WASTE OR ABUSE

- A. In accordance with Texas Government Code, Chapter 321, the SAO is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.
- B. If there is a reasonable cause to believe that fraud, waste or abuse has occurred at this agency, it can be reported to the SAO by calling 1-800-892-8348 or at the SAO's website at <http://www.sao.texas.gov/>. It can also be reported to the TDCJ Office of the Inspector General at 1-866-372-8329, the TDCJ Internal Audit Division at 936-437-7100, or Crime Stoppers at 1-800-832-8477.

SECTION F - DELIVERIES OR PERFORMANCE**F.1 PERIOD OF PERFORMANCE**

The Contract will consist of a Base Period of four (4) months (May 1, 2019 through August 31, 2019) and four (4) one (1) year Option Periods (September 1, 2019 through August 31, 2020; September 1, 2020 through August 31, 2021; September 1, 2021 through August 31, 2022 and September 1, 2022 through August 31, 2023).

SECTION G - CONTRACT ADMINISTRATION DATA**G.1 CLAUSES INCORPORATED BY REFERENCE**

This Contract incorporates one (1) or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contract Specialist will make their full text available.

Texas Government Code, Chapter 2251, Payment for Goods and Services.

G.2 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT SPECIALIST, CONTRACT MONITOR AND PROGRAM DIRECTOR**G.2.1 Authorized Representative**

- A. In the case of the Contractor, its President or any Vice President shall designate the Authorized Representative in writing. The designation of the Contractor's initial Authorized Representative shall be delivered to the Department no later than the effective date of this Contract. The Contractor's Authorized Representative may designate other persons to assist such Authorized Representative in the performance of certain obligations required by this Contract.
- B. In the case of the Department, the Executive Director is hereby designated as its Authorized Representative. The Executive Director has designated the Chief Financial Officer to act in his/her behalf on matters requiring signature approval of the Authorized Representative. The Director of Manufacturing, Agribusiness and Logistics has been designated as the Authorized Representative to act on behalf of the Chief Financial Officer on all matters pertaining to the daily operations of these Services as outlined in this Contract. The Department's Authorized Representatives may designate other persons to assist such Authorized Representatives in the performance of certain obligations of this Contract.
- C. At any time, any party may designate any person as its Authorized Representative by delivering to the other party a written designation signed, if on behalf of the Contractor by its President or any Vice President, or if on behalf of the Department by the Executive Director. Such designations shall remain effective until new written instruments are filed with or such notice is given to the other party that such designations have been revoked.
- D. The Department's Authorized Representative (the Executive Director) or his/her designated representative (Chief Financial Officer) is the only person authorized to make or approve changes in any of the requirements of this Contract, and notwithstanding any clauses contained elsewhere in this Contract, the said authority remains solely with the Executive Director or his/her designated representative. In the event the Contractor makes any change at the direction of any person other than the Executive Director or his/her designated representative, the change will be considered to have been made without authority and no adjustment will be made in the Contract price to cover any increase in cost incurred as a result thereof.

G.2.2 Contract Specialist

- A. The Contract Specialist for administration of this Contract is Steven Tilley.
- B. The telephone number for the Contract Specialist is (936) 437-7115.
- C. The fax number of the Contract Specialist is (325) 223-0310.
- D. The e-mail address for the Contract Specialist is steven.tilley@tdcj.texas.gov.
- E. The Contract Specialist is responsible for general administration of this Contract, negotiation of any changes and final issuance of written changes/modifications to this Contract. The Department, without prior notice to the Contractor, may at its discretion replace/reassign the Contract Specialist. The Contractor will be notified of the change.

G.2.3 Contract Monitor

- A. The Contract Monitors for this Contract are Todd Swick and Mike Corley.
- B. The telephone numbers for the Contract Monitors are (936) 437-6652 and (936) 437-6641.
- C. The fax number of the Contract Monitor is (936) 437-6648.
- D. The e-mail addresses are todd.swick@tdcj.texas.gov and mike.corley@tdcj.texas.gov.
- E. The Contract Monitor represents the Executive Director in the administration of technical details within the scope of this Contract. The Contract Monitor is also responsible for the final inspection and acceptance of all reports and such other responsibilities as may be specified in the Contract.
- F. The Contract Monitor is not authorized to make any representations or commitments of any kind on behalf of the Executive Director of the Department or the State of Texas. The Contract Monitor does not have the authority to alter the Contractor's obligations or to change the Contract specifications, price, terms or conditions.
- G. The Contract Monitor assignment for this Contract may be changed at any time by the Department without prior notice to the Contractor.

G.2.4 Program Director

- A. The Program Director for this Contract is _____ (To be named by the Contractor) _____.
- B. The telephone number for the Program Director is _____.
- C. The fax number for the Program Director is _____.
- D. The e-mail address for the Program Director is _____.

- E. The Contractor shall provide a Program Director for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact with the Department.
- F. The Program Director shall have full authority to act for the Contractor in the performance of the required Services.
- G. The Program Director or a designated representative shall meet with the Contract Monitor to discuss problems as they occur.

G.3 INVOICE REQUIREMENTS

- A. The Contractor's invoice shall include the following:
 - 1. Contract Number;
 - 2. Name of business and remittance address;
 - 3. Invoice date;
 - 4. Descriptions, price and quantity of services rendered, including the Contract Line Item Number;
 - 5. Prompt payment discount; and
 - 6. Name, title, phone number and complete mailing address of responsible official to whom payment is to be sent.
- B. Original invoices with appropriate documentation shall be submitted to the appropriate farm office at the time of Service.

G.4 PAYMENTS

- A. Payment is to be made by the Department to the Contractor after Services are rendered and invoices have been submitted accurately and completely.
- B. The Contractor may offer the Department a prompt payment discount, such as, of one percent (1%), ten (10) days (see Page 1, Block 7), if the Contractor requests an expedited Payment. Prompt payment discounts must also be stated on each invoice.
- C. Before the expiration date of this Contract, the Department may make, or have made, an inspection to determine full compliance in every respect with this Contract. Failure of the Contractor to fully and faithfully perform under this Contract shall subject the Contractor to satisfactorily complete Services prior to the expiration date. The Department may withhold any monies due to the Contractor or claimed to be due to the Contractor until the terms of this Contract have been fulfilled and the work of the Contractor accepted.
- D. It is recommended that the Contractor receive Payments via Electronic Funds Transfer (EFT), also known as direct deposit.

- E. Regardless as to whether direct deposit is chosen, upon Contract award the Contractor shall submit a completed Vendor Maintenance Direct Deposit and Substitute W-9 Form to the following address:

Texas Department of Criminal Justice
 Attention: Accounts Payable
 P.O. Box 4018
 Huntsville, Texas 77342-4018

If the Contractor has previously submitted a completed Vendor Maintenance Direct Deposit and Substitute W-9 Form to the Department for another separate contract, another form is not required to be submitted.

The form and instructions can be found at the following link on the TDCJ website:
https://www.tdcj.texas.gov/divisions/bfd/acct_accts_pay.html.

- F. In the event the Contractor elects to decline direct deposit on the Vendor Maintenance Direct Deposit and Substitute W-9 Form, the Payment will be mailed to the following remittance address:

G.4.1 Late Payment

Any amount owed to the Contractor more than one (1) day beyond the date such amount is due as described in Section G.4 hereof shall accrue interest each day that such amount is not paid at the rate specified by Texas Government Code, Section 2251.025, provided, however, that this provision shall not excuse failure by the Department to make Payment in strict accordance with this Contract.

G.4.2 Withholding of Payment

- A. The Department shall have the right to withhold the Payment to the Contractor until the failures described below have been corrected.
 - 1. Failure to respond to audit reports as set forth in Section E.1.C; and
 - 2. Failure to correct identified areas of non-compliance to the satisfaction of the Department within twenty (20) days upon receipt of written notification.
- B. The Contractor agrees that the Department shall not pay interest to the Contractor for monies so withheld.
- C. The Payment withheld shall be released upon the Department’s satisfaction that compliance has been achieved for thirty (30) consecutive days.

D. With the exception of disputed issues, such withholding of final Payment by the Department shall not exceed one hundred twenty (120) days from the date of Contract termination.

G.5 PAYMENT OF DEBT OWED TO THE STATE OF TEXAS

As required by Texas Government Code, Section 2252.903, the Contractor agrees that any payments due under this Contract shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. The Contractor shall comply with the rules adopted by the Department under Texas Government Code, Sections 403.055, 403.0551, 2252.903 and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

G.6 RIGHT TO OFFSET

In the event the Department determines that the Contractor owes money to the Department under any contract or purchase order, the Department, upon providing the Contractor with written notice of its intent to offset, shall have the right to withhold monies due to the Contractor with respect to this Contract or purchase order or with respect to any contract or purchase order with the Department and apply such monies to the money due to the Department.

SECTION H - SPECIAL CONTRACT REQUIREMENTS**H.1 INSURANCE REQUIREMENTS**

- A. Prior to the approval of this Contract by the Department, the Contractor shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to the Department. It is recommended that coverage be with a company or companies having both a Financial Strength Rating of "A" or better and Financial Size Category Class of "VII" or better from A.M. Best Company, Inc.
- B. The insurance shall be evidenced by delivery to the Department of certificates of insurance executed by the insurer or its authorized agent stating coverage, limits, expiration dates and compliance with all applicable required provisions.
- C. Upon request, the Department shall be entitled to receive without expense, copies of the policies and all endorsements. Copies and changes to the initial insurance policies, including extensions, renewals, cancellations and revisions shall be submitted to the Contract Specialist within thirty (30) days of the effective date.
- D. Subject to the Contractor's right to maintain reasonable deductibles, the Contractor shall obtain and maintain in full force and effect for the duration of this Contract and any extension hereof, at the Contractor's sole expense, insurance coverage in the following type(s) and amounts:
1. **Workers' Compensation** with statutory limits; **Employers Liability** with minimum limits for bodily injury:
 - a. By accident, \$500,000 per each accident; and
 - b. By disease, \$500,000 per employee with a per policy aggregate of \$1,000,000.
 2. **Commercial Automobile Liability Insurance** covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence.
 3. **Commercial General Liability Insurance** including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, independent contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 products/completed operations aggregate and \$2,000,000 general aggregate.
 - a. Civil Rights Liability must be provided with the same liability limits. It may be included with the General Liability Policy or written on a separate policy.
 - b. Liability coverage shall include coverage for damage to property and injury to persons caused by boiler and other equipment malfunction. The policy shall contain an endorsement to include coverage for the property of third parties.
 - c. The Department shall be named as an additional insured by using endorsement CG2026 or broader.

Note: If the insurance described in paragraphs 3 above is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than sixty (60) months following completion of the Contract and acceptance by the Department. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to this Contract.

H.1.1 Required Provisions

The Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- A. Name the Department and its officers, employees and elected representatives as additional insured to all applicable coverages.
- B. Waive subrogation against the Department, its officers, employees and elected representatives, for bodily injury (including death), property damage or any other loss, to all applicable coverages.
- C. Provide that the Contractor's insurance is the primary insurance in regards to the Department, its officers, employees and elected representatives.
- D. Provide that all provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- E. Ensure that all certificates of insurance identify the Service or product being provided and the name of the responsible party.
- F. The Contractor through an insurance agent licensed by the State of Texas shall obtain all insurance coverage and an insurance company licensed to issue such coverage in this State shall provide such coverage. No "self-insurance" coverage shall be acceptable. All policies shall include a provision requiring a written notice of cancellation to the Department.
- G. All insurance coverage obtained by the Contractor shall continue in full force and effect during the Contract Term. No Contract shall be entered into between the Contractor and the Department unless insurance coverage binders are received by the date scheduled for the execution of the Contract. Proof of insurance policies must be delivered prior to the Service Commencement Date.
- H. The Contractor may choose the amount of deductible for any other insurance coverage required (above) to be obtained by the Contractor. The deductible may exceed five percent (5%) of the required yearly aggregate limit of coverage for each occurrence. The Contractor is responsible for the first (1st) dollars to be paid for any such claim.
- I. The Contractor is responsible for the first (1st) dollar defense coverage. All general liability and professional liability policies shall provide defense in addition to the policy limits.
- J. The limits required herein are minimum acceptable. However, these limits are not to be construed as being the maximum any prospective contractor may wish to purchase for their own benefit.

- K. As respect to the total limits of liability required, any combination of primary and/or umbrella coverage may satisfy those totals. However, if an umbrella is used, coverage must be at least as broad as the primary coverage.

H.2 SUBCONTRACTORS

- A. The Contractor may subcontract for the performance of any of its responsibilities to provide Services pursuant to this Contract.
- B. No subcontract may be entered into unless the Department provides prior written approval, which approval may not be unreasonably withheld.
- C. If a subcontractor is deemed to be needed for an event of an emergency nature, verbal approval may be obtained through an authorized Department representative. The Contractor shall submit a written request with supporting documentation for approval by the Department, as soon as possible.
- D. The Contractor shall furnish to the Department copies of all subcontracts, without regard to the amount of annual payments.
- E. Any arrangement by the Contractor with an affiliate or member company to provide Services for this Contract shall be subject to the subcontractor provisions of this Section.
- F. No contractual relationship shall exist between the Department and any subcontractor and the Department shall accept no responsibility whatsoever for the conduct, actions or omissions of any subcontractor selected by the Contractor.
- G. The Contractor shall be responsible for the management of the subcontractors in the performance of their work.
- H. A subcontractor may not work directly with the Department in any manner and shall not be included in the Contract award, renewals, audits, or any other discussions except at the request of the Department.
- I. Unless waived in writing by the Department, the subcontract shall contain the following:
 - 1. An acknowledgement that the subcontract is subject to the Contract between the Department and the Contractor (the "Master Contract").
 - 2. The subcontractor shall agree to comply with the terms of the Master Contract to the extent applicable with respect to goods and Service being provided under the subcontract. It is the intention of the parties of the subcontract that the subcontractor shall "stand in the shoes" of the Contractor with respect to fulfilling the duties and obligations of the Contractor to the Department under the Master Contract.
 - 3. The Department's approval of a subcontract does not relieve the Contractor of its duty to perform under the Master Contract.
 - 4. The Department shall be deemed a "third party beneficiary" to the subcontract.

5. The subcontract shall contain the required Authority to Audit Clause referenced in Section E.3, and the required Non-Discrimination Clause referenced in Section I.12.

H.2.1 Insurance

The Contractor shall require all subcontractors to obtain, maintain and keep in force insurance coverage in accordance with accepted industry standards and the Contract during the time they are engaged hereunder.

H.3 UTILIZATION OF SERVICES

The Department does not covenant or represent to the Contractor a minimum amount of Service that will be performed under this Contract. The Department will not be liable to the Contractor for loss of profits or damages incurred by the Contractor in the event that the Department does not utilize aerial spraying Services from the Contractor.

H.4 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS

- A. The Contractor shall comply with Texas Government Code, Section 2155.4441 relating to the service contract use of products produced in the State of Texas.
- B. In performing Services under this Contract, the Contractor 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 of Texas.

H.5 BOOKS AND RECORDS

The Contractor must retain all financial records, including supporting documents, statistical records, and any other records or books, relating to the Contractor's performance under the Contract. These records must be maintained in accordance with the Department's Records Retention Schedule. The Contractor will grant access to all books, records, and documents pertinent to the Contract to the Department, SAO, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

H.6 FELONY CRIMINAL CONVICTIONS

The Contractor represents and warrants that the Contractor has not and the Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, the Contractor has fully advised the Department as to the facts and circumstances surrounding the conviction.

H.7 SECURITY

The Contractor's employees and representatives, vehicles and equipment must be under security surveillance at all times and are subject to inspection at any time while on State property. The Contractor agrees to abide by all Department Policies and unit rules and regulations on State property. These rules, in part, prohibit the introduction of alcohol, narcotics, weapons, gambling paraphernalia, pagers and cellphones to any State property. This includes having these items in the personal vehicles of on-site employees. The Contractor's employees may not carry more than twenty-five dollars (\$25.00) in cash into any Department facility. Tobacco products are strictly prohibited on TDCJ units, but are allowed in the personal vehicles of on-site employees or

in designated smoking areas. All vehicles must be kept locked when not in use and the Contractor's employee must stay with the vehicle when it is unlocked.

H.8 ORGANIZATIONAL AND NAME CHANGE

The Contractor shall submit written notification to the Department within thirty (30) Days of any changes in the Contractor's name, address, telephone number, fax number and/or e-mail address with an effective date of such change. The Contractor shall submit to the Department a copy of any registration "to do business as," "DBA," or "also known as," "AKA," and any legal corporate name change filed with the Secretary of State.

H.9 FREE EXERCISE OF RELIGION

The Contractor is prohibited from substantially burdening an employee's or Offender's free exercise of religion.

H.10 DELAY OF SERVICES

The Contractor shall meet its obligations to commence Services within the time frames defined by the Contract. In the event the Contractor fails to meet those time frames as defined by the Contract, absent extensions from the Department, the Department will have the right to obtain the Services from another source and charge the cost thereof to the Contractor for each day that Services are not performed due to delays caused by the Contractor's nonperformance. The Department will provide written notification to the Contractor by certified mail, return receipt requested, of the charges which will include the date of imposition and the amount that has accrued daily as of the date of the notification.

SECTION I - CONTRACT CLAUSES**I.1 AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR**

- A. Funds are not presently available for performance under this Contract beyond August 31, 2019.
- B. The Department's obligation for performance of this Contract beyond that date is contingent upon legislative approval and the availability of appropriated funds from which Payment for Contract purposes can be made.
- C. No legal liability on the part of the Department for any Payment may arise for performance under this Contract beyond August 31, 2019, until funds are made available to the Department for performance and until the Contractor receives notice of availability.
- D. Refer to Section I.3.4, Termination for Unavailability of Funds, for the Department's right to terminate this Contract in the event it is appropriated insufficient funds.

I.2 ADVERTISING OF AWARD

The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product(s) or Service(s) provided is endorsed or preferred by the Department or is considered by the Department to be superior to other products or Services.

I.3 DEFAULT AND TERMINATION**I.3.1 Default by the Contractor**

Each of the following shall constitute an Event of Default on the part of the Contractor:

- A. A material failure to keep, observe, perform, meet, or comply with any covenant, agreement, term, or provision of this Contract to be kept, observed, met, performed, or complied with by the Contractor hereunder, when such failure continues for a period of twenty (20) days after the Contractor's receipt of written notice thereof;
- B. A material failure to meet or comply with, Department Policy, any court order, federal or state requirement or law, when such failure continues for a period of twenty (20) days after the Contractor's receipt of written notice thereof;
- C. The Contractor's material failure to comply with any Department Policies for which the Contractor has been expressly required to comply and for which the Contractor has not received a prior written waiver from the Department, when such failure continues for a period of twenty (20) days after the Contractor's receipt of written notice thereof;
- D. Insolvency of the Contractor as evidenced by any of the following occurrences:
 - 1. Its inability to pay its debts;
 - 2. Any general assignment for the benefit of creditors;

3. Any decree or order appointing a receiver or trustee for it or substantially all of its property to be entered and, if entered without its consent, not to be stayed or discharged within sixty (60) days;
 4. Any proceedings under any law relating to bankruptcy, insolvency, or the reorganization or relief of debtors to be instituted by or against it and, if contested by it, not to be dismissed or stayed within sixty (60) days; or
 5. Any judgment, writ of attachment or execution, or any similar process to be issued or levied against a substantial part of its property which is not released, stayed, bonded, or vacated within sixty (60) days after issue or levy.
- E. The discovery by the Department that any statement, representation or warranty in this Contract is false, misleading, or erroneous in any material respect; or
- F. A failure by the Contractor to comply with contractual terms and conditions, resulting in a breach of security or health and safety standards. This Event of Default may result in the immediate termination of this Contract.

I.3.2 Further Opportunity to Cure

- A. If an Event of Default of the type specified in Section I.3.1 occurs and the Contractor reasonably believes that such Event of Default cannot be cured within the twenty (20) days allowed in Section I.3.1 but that such Event of Default can be cured through a diligent, on-going, and conscientious effort on the part of the Contractor, within a reasonable period not to exceed three (3) months, then the Contractor may, within the twenty (20) day cure period, submit a detailed plan for curing the Event of Default to the Department.
- B. Upon receipt of any such plan for curing an Event of Default, the Department shall promptly review such plan and at its discretion, which must be reasonable in the circumstances, may allow, or not allow, the Contractor to pursue such plan of cure.
- C. The decision of the Department will be communicated in writing to the Contractor.
- D. The Department agrees that it will not exercise its remedies thereunder with respect to such Event of Default for so long as the Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.
- E. If the Department does not allow the Contractor an extension of the cure period, the twenty (20) day time period shall be tolled during the period of time the request is pending before the Department.

I.3.3 Remedy of the Department

When an Event of Default by the Contractor has been determined to exist, the Department's Authorized Representative will notify the Contractor, in writing, of such Event of Default, and subject to the provisions of Section I.3.2, the Department will have the right to pursue any remedy it may have by law or in equity including, but not limited to:

- A. Reducing its claim to a judgment;

- B. Taking action to cure the Event of Default, in which case the Department may offset against any Payments owed to the Contractor all reasonable costs incurred by the Department in connection with its efforts to cure such Event of Default;
- C. Withholding of funds as authorized in Section G.4.2; or
- D. Exercising a Termination for Default.
 - 1. In the event of Termination for Default, the Department shall offset against Payments owed to the Contractor any reasonable amounts expended by the Department to cure the Event of Default.
 - 2. The Department will have no further obligations to the Contractor after such termination.
 - 3. The Department may also acquire, in the manner the Department considers appropriate, services similar to those terminated and the Contractor will be liable to the Department for any increase in costs for those services.
 - 4. The Contractor shall not be liable for any increase in costs if the failure to perform the Contract arises from and without the fault or negligence of the Contractor as follows:
 - a. Acts of God or of the public enemy;
 - b. Acts of the State in either its sovereign or contractual capacity;
 - c. Fires;
 - d. Floods;
 - e. Epidemics;
 - f. Quarantine restrictions;
 - g. Strikes;
 - h. Freight embargoes; and
 - i. Unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

I.3.4 Termination for Unavailability of Funds

- A. The Payment of money by the Department or the State under any provisions hereof is contingent upon the availability of funds appropriated by the Legislature to an agency or department of the State to cover the provisions hereof.
- B. Neither the State, the Department nor its elected officials, officers, employees, agents, attorneys or other individuals acting on behalf of the State, make any representations or

warranty as to whether any appropriation will, from time to time during the Contract Term, be made by the Legislature of the State.

- C. In the event State funds for this Contract become unavailable due to Non-Appropriation, the Department will have the right to terminate the Contract without penalty.
- D. The Contractor acknowledges that the Department does not receive a "line item appropriation".
 - 1. If the funds appropriated are not sufficient to pay for the Department's operating expenses, contractual obligations and other financial obligations, the Department, in its sole discretion, will determine what operating expenses, contractual obligations and other financial obligations it will pay.
 - 2. In the event the Department determines it was not appropriated sufficient money, the Department may terminate this Contract without paying the Contractor any additional money or penalty, provided that the Department will pay the Contractor for obligation that occurred up to the time of termination.

I.3.5 Non-Appropriation Effect and Remedy

An event of Non-Appropriation shall not cause the Department to be in default hereunder, but upon any such event of Non-Appropriation, this Contract shall automatically terminate as of the last day of the Biennium for which appropriations have been made.

I.3.6 Termination for Convenience

The Department may, in its sole discretion, terminate this Contract with or without cause, by providing the Contractor with sixty (60) days prior written notice of such termination.

I.3.7 Termination by Mutual Agreement

The parties may terminate this Contract by mutual agreement, the terms of which shall be set forth in writing.

I.3.8 Termination Procedures

- A. Upon Termination for Default, Termination for Convenience, Termination by Mutual Agreement or Termination for Unavailability of Funds as heretofore mentioned, the following procedures will be adhered to:
 - 1. The Department will immediately notify the Contractor in writing specifying the effective termination date.
 - 2. After receipt of the Notice of Termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
 - a. Place no further subcontracts or orders in support of this Contract;
 - b. Terminate all subcontracts; and

- c. Cancel all orders as applicable.
- B. Upon termination, the Contractor shall be entitled to receive from the Department Payment for all Services satisfactorily furnished under this Contract up to and including the date of termination. Claims submitted after one hundred eighty (180) days from the date of termination will not be considered.

I.3.9 Default by the Department

Each of the following shall constitute an Event of Default on the part of the Department:

- A. Failure by the Department to observe and perform any material covenant, condition, or agreement on its part to be observed or performed; or
- B. Its failure or refusal to substantially fulfill any of its material obligations hereunder, unless caused by the default of the Contractor; and
- C. Unless cured by the Department within twenty (20) days after receiving written notice thereof.

I.3.10 Remedy of the Contractor

Upon an Event of Default by the Department, the Contractor's sole remedy shall be to follow the Dispute Resolution Process in Section I.3.11 below.

I.3.11 Dispute Resolution

- A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between the Department and the Contractor shall be resolved as follows:
 - 1. The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall be used, as further described herein, by the Department and the Contractor to attempt to resolve any claim for breach of Contract made by the Contractor.
 - 2. A Contractor's claims for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Texas Government Code, Chapter 2260, Subchapter B.
 - 3. To initiate the process, the Contractor shall submit written notice, as required by Texas Government Code, Chapter 2260, Subchapter B, to the Contracts and Procurement Director or designee, at Two Financial Plaza, Suite 525, Huntsville, Texas 77340.
 - 4. Said notice shall specifically state the provisions of Texas Government Code, Chapter 2260, Subchapter B, are being invoked, and shall also be given to all other representatives of the Department and the Contractor otherwise entitled to notice under the parties' Contract.
 - 5. Compliance by the Contractor with Texas Government Code, Chapter 2260, Subchapter B, is a condition precedent to the filing of a contested case proceeding under Texas Government Code, Chapter 2260, Subchapter C.

6. The contested case process provided in Texas Government Code, Chapter 2260, Subchapter C, is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the Department if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.
 7. Compliance with the contested case process provided in Texas Government Code, Chapter 2260, Subchapter C, is a condition precedent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code.
 8. Neither the execution of this Contract by the Department nor any other conduct of any representative of the Department related to the Contract shall be considered a waiver of sovereign immunity to suit.
- B. In addition to complying with Texas Government Code, Chapter 2260, the Department and the Contractor shall comply with the rule published in Texas Administrative Code, Title 37, Part 6, Chapter 155, Subchapter C, Rule 155.31.
 - C. At all times during the course of the dispute resolution process, the Contractor shall continue with providing Services as directed, in a diligent manner and without delay, shall conform to the Department's directive, decision or order, and shall be governed by all applicable provisions of this Contract.
 - D. Records of the Services performed shall be kept in sufficient detail to enable payment in accordance with applicable provisions of this Contract, if this should become necessary.
 - E. This provision shall not be construed to prohibit the Contractor from seeking any other legal or equitable remedy to which it is entitled.

I.4 NO WAIVER OF RIGHTS

- A. No failure on the part of any party to exercise, and no delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or in the exercise of any other right.
- B. The remedies provided in this Contract are cumulative and non-exclusive of any remedies provided by law or in equity, except as expressly set forth herein.

I.5 INDEMNIFICATION OF THE DEPARTMENT

I.5.1 Acts or Omissions

The Contractor shall indemnify and hold harmless the State of Texas, the Department, the TBCJ, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of, or resulting from any acts or omissions of the Contractor or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any purchase orders issued under the Contract. The defense shall be coordinated by the Contractor with the Office of the Attorney

General when Texas State Agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. The Contractor and the Department agree to furnish timely written notice to each other of any such claim.

I.5.2 Infringements

The Contractor shall defend, indemnify, and hold harmless the Department and the State of Texas from and against any and all claims, violations, misappropriations or infringement of any patent, trademark, copyright, trade secret or other intellectual property rights and/or other intangible property, publicity or privacy rights, and/or in connection with or arising from: (1) the performance or actions of the Contractor pursuant to this Contract; (2) any deliverable, work product, configured Service or other service provided hereunder; and/or (3) the Department's and/or the Contractor's use of or acquisition of any requested Services or other items provided to the Department by the Contractor or otherwise to which the Department has access as a result of the Contractor's performance under the Contract. The Contractor and the Department agree to furnish timely written notice to each other of any such claim. The Contractor shall be liable to pay all costs of defense, including attorney fees. The defense shall be coordinated by the Contractor with the Office of the Texas Attorney General (OAG) when Texas state agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from OAG. In addition, the Contractor will reimburse the Department and the State of Texas for any claims, damages, costs, expenses or other amounts, including, but not limited to, attorney fees and court costs, arising from any such claim. If the Department determines that a conflict exists between its interests and those of the Contractor or if the Department is required by applicable law to select separate counsel, the Department will be permitted to select separate counsel and the Contractor will pay all reasonable costs of the Department's counsel.

I.5.3 Taxes/Workers' Compensation/Unemployment Insurance - Including Indemnity

- A. The Contractor agrees and acknowledges that during the existence of this Contract, the Contractor shall be entirely responsible for the liability and payment of the Contractor's and the Contractor's employees' taxes of whatever kind, arising out of the performances in this Contract. The Contractor agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The Department and/or the State shall not be liable to the Contractor, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a State employee or employee of another governmental entity customer.
- B. The Contractor agrees to indemnify and hold harmless the Department, the TBCJ, the State of Texas and/or their employees, agents, representatives, contractors, and/or assignees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses, relating to tax liability, unemployment insurance and/or workers' compensation in its performance under this Contract. The Contractor shall be liable to pay all cost of defense including attorney fees. The defense shall be coordinated by the Contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. The Contractor and the Department agree to furnish timely written notice to each other of any such claim.

I.6 NO WAIVER OF DEFENSES

- A. Neither the Department nor the Contractor shall waive, release or otherwise forfeit any possible defense the Department or the Contractor may have regarding claims arising from or made in connection with the performance of the Services by the Contractor without the consent of the other party.
- B. The Department and the Contractor shall reserve all such available defenses and cooperate with each other to make such defenses available for each other's benefit to the maximum extent allowed by law, including any defenses the Department may have regarding litigation, losses and costs resulting from claims or litigation pending at the time the Contract becomes effective, or arising thereafter from occurrences prior to the effective date hereof.

I.7 INDEPENDENT CONTRACTOR

- A. The Contractor is associated with the Department only for the purposes and to the extent set forth herein, and with respect to the performance of Services hereunder, the Contractor is and shall be an independent contractor and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties hereunder.
- B. Nothing contained herein shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principal-agent, or to otherwise create any liability for the Department whatsoever with respect to the indebtedness, liabilities, and obligations of the Contractor or any other party.
- C. The Contractor shall be solely responsible for (and the Department shall have no obligation with respect to) payment of all Federal Income, FICA, and other taxes owed or claimed to be owed by the Contractor, arising out of the Contractor's association with the Department pursuant hereto, and the Contractor shall indemnify and hold the Department harmless from and against any and all liability from all losses, damages, claims, costs, penalties, liabilities, and expenses howsoever arising or incurred because of, incident to, or otherwise with respect to any such taxes.

I.8 LAWS OF TEXAS

This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas.

I.9 ASSIGNMENT

- A. The Contractor may not assign any interest in this Contract without the prior written consent of the Department which consent the Department may withhold at its sole discretion.
- B. If the Department so elects in its sole discretion, this Contract will terminate upon the occurrence of any of the following:
 - 1. More than fifty percent (50%) of the assets of the Contractor are sold;
 - 2. The Contractor is merged into, acquired by, or consolidated with another corporation or business entity; or is otherwise the subject of reorganization; or

3. Any shareholder or owner of the Contractor who owns at least ten percent (10%) beneficial ownership of the Contractor fails to continue to own at least ten percent (10%).
- C. In the event that any sale, transfer, or assignment, as referenced in paragraphs A and B above, is consented to by the Department, the transferee or its legal representative shall agree in writing with the Department to assume, perform and be bound by the covenants, obligations and agreements contained herein.

I.10 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS

- A. The Contractor, if incorporated, shall at all times maintain its corporate existence and authority to transact business and be in good standing in its jurisdiction of incorporation and the State of Texas.
- B. The Contractor shall maintain all licenses, permits and franchises necessary for its business where the failure to so maintain might have a material adverse effect on its ability to perform its obligations under this Contract.

I.11 APPROVAL OF CONTRACT

- A. This Contract is subject to written approval of the Executive Director of the Department or the Director's designated representative and shall not be binding until so approved.
- B. For Contracts valued over \$1,000,000.00 in the initial Contract Term, the Executive Director's approval shall be given only on the approval of the TBCJ.

I.12 NON-DISCRIMINATION

In the performance of this Contract, the Contractor warrants that it shall not discriminate against any employee, subcontractor, participant or provider on account of race, color, disability or perceived disability, religion, sex, national origin, genetic information, or age, and in accordance with the following:

- A. The Contractor shall not discriminate against employees, subcontractors, participants or providers who have or are perceived to have a disability because of Acquired Immune Deficiency Syndrome (AIDS) or Human Immunodeficiency Virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The Contractor shall post notices setting forth the provisions of this Non-Discrimination Clause in conspicuous places, available to employees and applicants for employment.
- B. In all solicitations or advertisements for employees and/or the purchase of Services, the Contractor shall state that it is an equal opportunity employer; provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting this requirement.
- C. The Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions shall be binding upon each subcontractor or vendor.

I.13 CONFIDENTIALITY AND OPEN RECORDS**I.13.1 Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of the Contract shall be kept confidential unless otherwise provided by law and shall not be made available to any individual or organization by the Contractor or the Department without prior approval of the other party.

I.13.2 Open Records

In accordance with Texas Government Code, Section 2252.907, the Contractor acknowledges that this Contract and information created or maintained in connection with this Contract is public information and subject to disclosure as provided by Texas Government Code, Chapter 552 (Texas Public Information Act). The Texas Public Information Act may require the Contractor to make information related to this Contract available to the public pursuant to a request for public information. The Contractor agrees, upon request, to make information related to this Contract that is not otherwise excepted from release by the Texas Public Information Act available to the public, in hard copy, unless the requestor of the information consents to receive the information in another mutually agreeable format. The Contractor acknowledges that the agency shall not provide legal counsel related to the Contractor's compliance with the Texas Public Information Act.

I.14 CONTRACT CHANGES

- A. Changes/modifications to this Contract (except Contract extensions in accordance with Sections I.15 and I.16; administrative changes; such as changing the Contract Specialist designation; correcting typographical errors; or other unilateral changes discussed elsewhere in the Contract) shall be mutually agreed to by the parties and executed in writing with the authorized signatures.
- B. The Department, at its sole discretion, may revise funding during the course of this Contract by issuing a unilateral modification to the Contractor.

I.15 OPTION TO EXTEND THE TERM OF THE CONTRACT

- A. The Department may, at its sole discretion, extend the Contract Term by written notice to the Contractor within ten (10) days of Contract expiration, provided that the Department shall give the Contractor a preliminary written notice of its intent to extend at least sixty (60) days before the Contract expires.
- B. The preliminary notice does not commit the Department to an extension.
- C. If the Department exercises this option, the extended Contract shall be considered to include this option provision.

I.16 OPTION TO EXTEND SERVICES

- A. The Department may require continued performance of any Services within the limits and at the rates specified in this Contract.

- B. The Department reserves the right to extend this Contract for a ninety (90) day period at the end of each Contract and/or extension period for the purpose of re-advertising the Service, awarding a new contract, and transitioning into a new contract.
- C. This option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed six (6) months.
- D. The Department may exercise the option by written notice to the Contractor within the period specified in Section I.15.

I.17 SEVERABILITY

In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

I.18 IMMIGRATION

The Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and all subsequent immigration laws and amendments.

I.19 NO LIABILITY UPON TERMINATION

If this Contract is terminated for any reason, the Department and the State of Texas shall not be liable to the Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, the Contractor may be entitled to the remedies established in Section I.3.11.

I.20 LIMITATION ON AUTHORITY

The Contractor shall have no authority to act for or on behalf of the Department or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. The Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or the Department.

I.21 INTELLECTUAL PROPERTY INDEMNIFICATION

- A. The Contractor will indemnify, defend, and hold harmless the State of Texas and the Department against any action or claim brought against the State of Texas and/or the Department that is based on a claim that software infringes any patent rights, copyright rights or incorporated misappropriated trade secrets. The Contractor will pay any damages attributable to such claim that are awarded against the State of Texas and/or the Department in a judgment or settlement.
- B. If the Department's use of the software becomes subject to a claim, or is likely to become subject to a claim, in the sole opinion of the Department, the Contractor shall, at its sole expense (1) procure for the Department the right to continue using such software under the terms of this Contract; or (2) replace or modify the software so that it is non-infringing.

I.22 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY TEXAS ADMINISTRATIVE CODE, TITLE 1, PART 10, CHAPTER 213

- A. Effective September 1, 2006 State Agencies and Institutions of Higher Education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in Texas Administrative Code, Title 1, Part 10, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- B. The Contractor shall provide the Department with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under the Rehabilitation Act, Section 508), or indicate that the product/Service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Contractors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide the Department with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

I.23 RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP)

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the Department by the Contractor upon completion, termination, or cancellation of this Contract. The Contractor may, at its own expense, keep copies of all its writings for its personal files. The Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department; provided, however, that the Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

I.24 FORCE MAJEURE

- A. Neither the Contractor nor the Department shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform.
- B. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.
- C. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

I.25 NOTICES

Any written notices required under this Contract will be delivered by carrier service to the Contractor's office address specified on Page 1, of this Contract or by U.S. mail or e-mail.

Notices to the Department shall be sent to:

Steven Tilley, Contract Specialist
Texas Department of Criminal Justice
Contracts and Procurement Department
Two Financial Plaza, Suite 525
Huntsville, Texas 77340
steven.tilley@tdcj.texas.gov

Notice will be effective upon receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party. This change shall be incorporated with a unilateral modification.

I.26 SUBSTITUTIONS

Substitutions are not permitted without written approval of the Department.

I.27 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM

- A. By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
1. All persons employed to perform duties within Texas, during the Contract Term; and
 2. All persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.
- B. The Contractor shall provide, upon request of the Department, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and the Contractor's subcontractors, as proof that this provision is being followed.
- C. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the State and at no fault to the State, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the State must undertake to replace the terminated Contract.

I.28 ANTITRUST AFFIRMATION

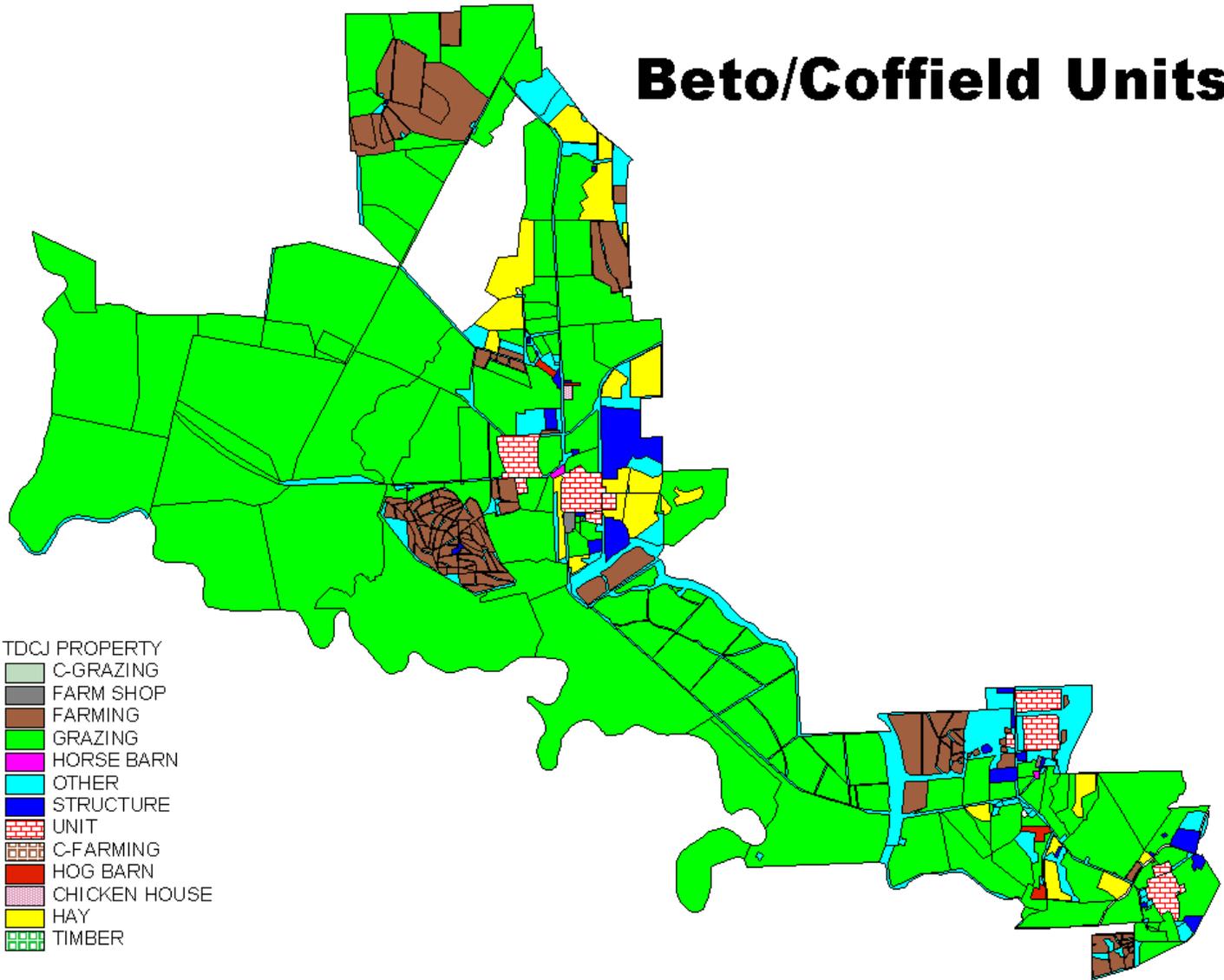
The Contractor shall confirm, under penalty of perjury of the laws of the State of Texas that (1) in connection with this Contract, neither the Contractor nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Texas Business and Commerce Code Chapter 15; (2) in connection with this Contract, neither the Contractor nor any

representative of the Contractor have violated any federal antitrust law; and (3) neither the Contractor nor any representative of the Contractor have directly or indirectly communicated any of the contents of this Contract to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

SECTION J - LIST OF EXHIBITS

EXHIBIT NO.	TITLE	NUMBER OF PAGES
J.1	Aerial Maps	10

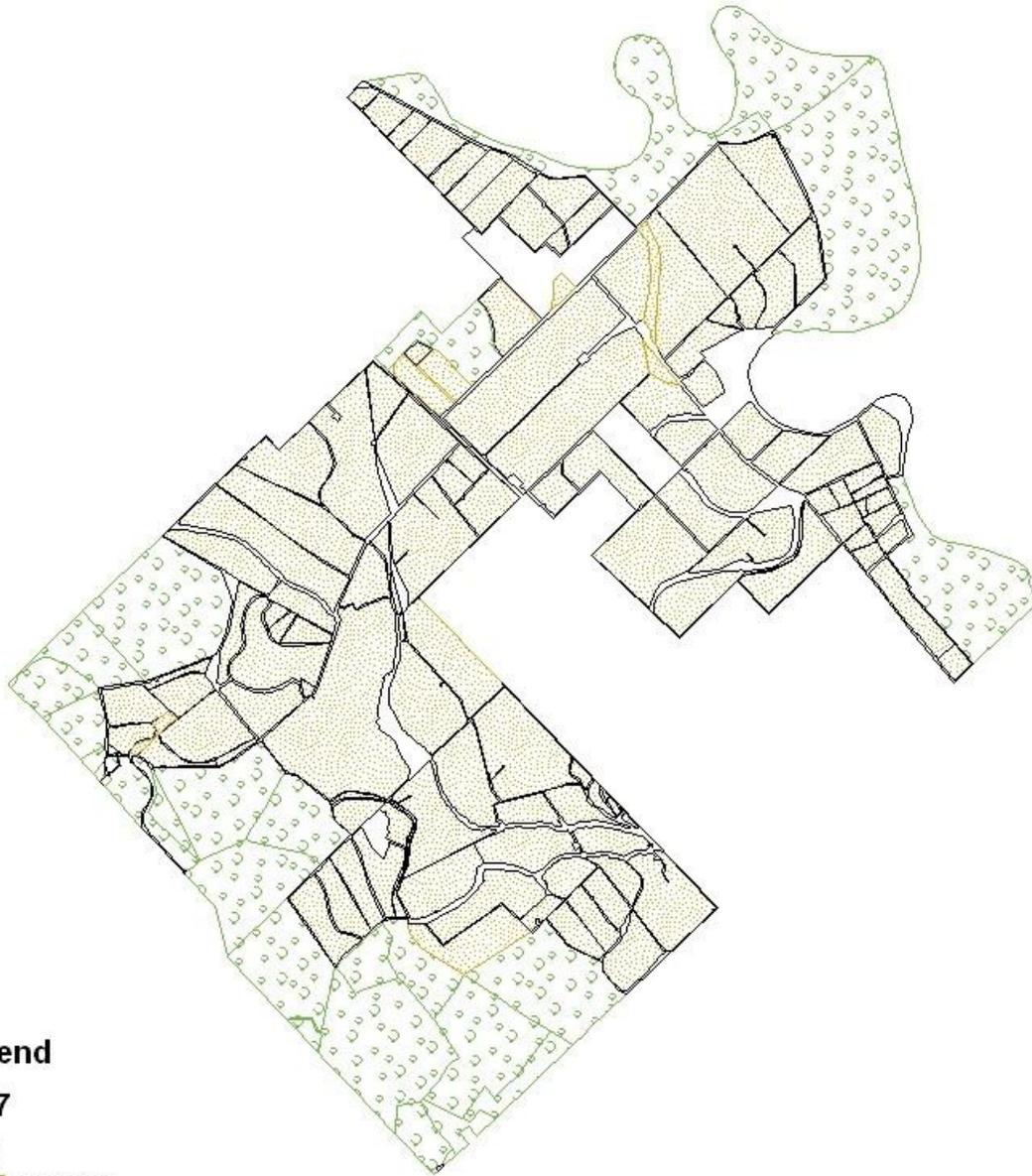
Beto/Coffield Units



 this map prepared by:
Texas Department of Criminal Justice
Agribusiness, Land and Minerals
Huntsville, Texas



BUFFALO RANCH USE MAP



Legend

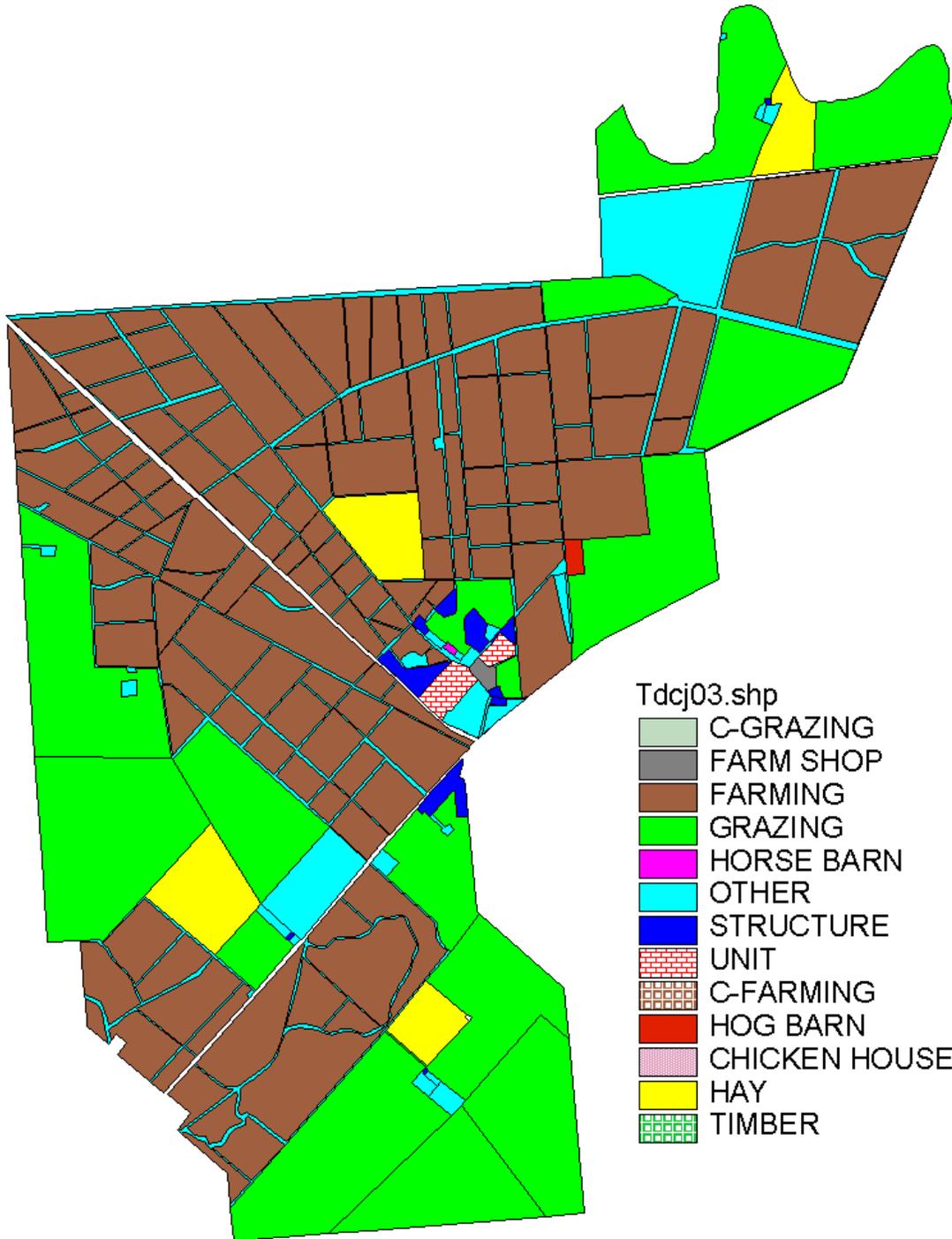
FY07

USE

-  FARMING
-  GRAZING
-  OTHER



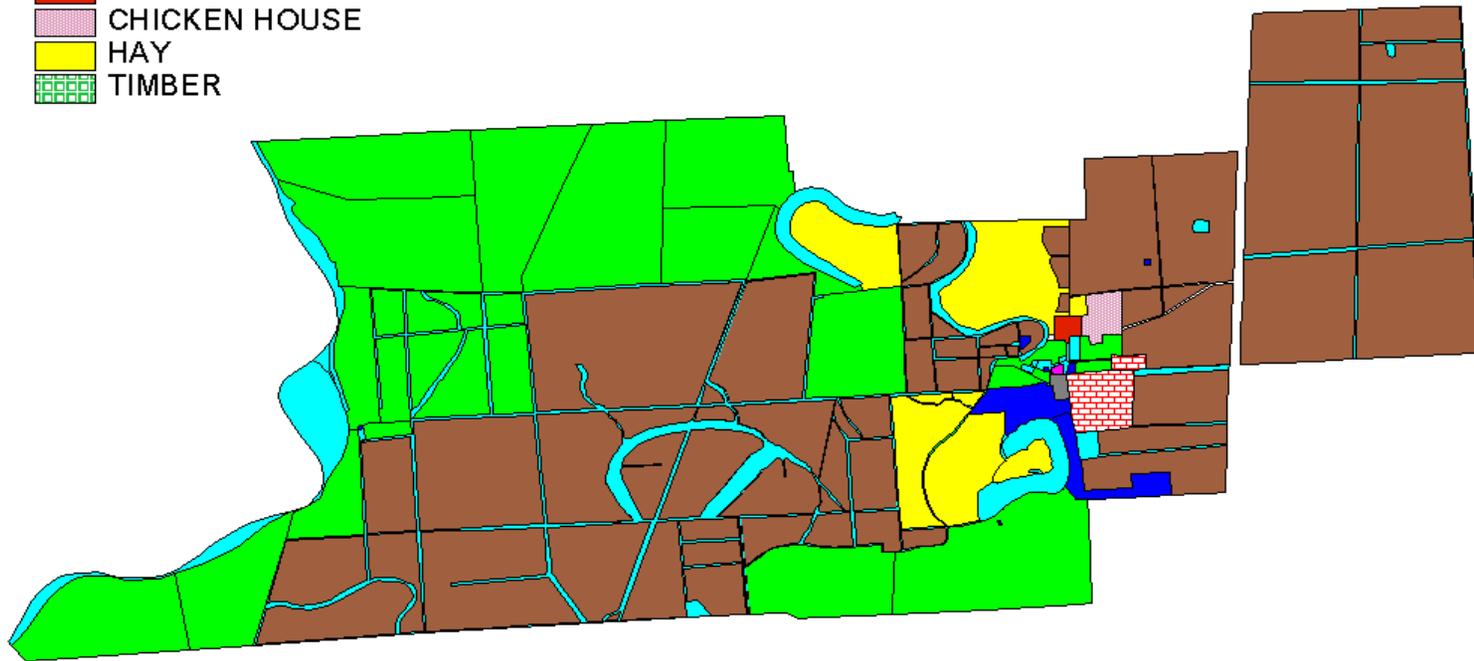
CLEMENS UNIT



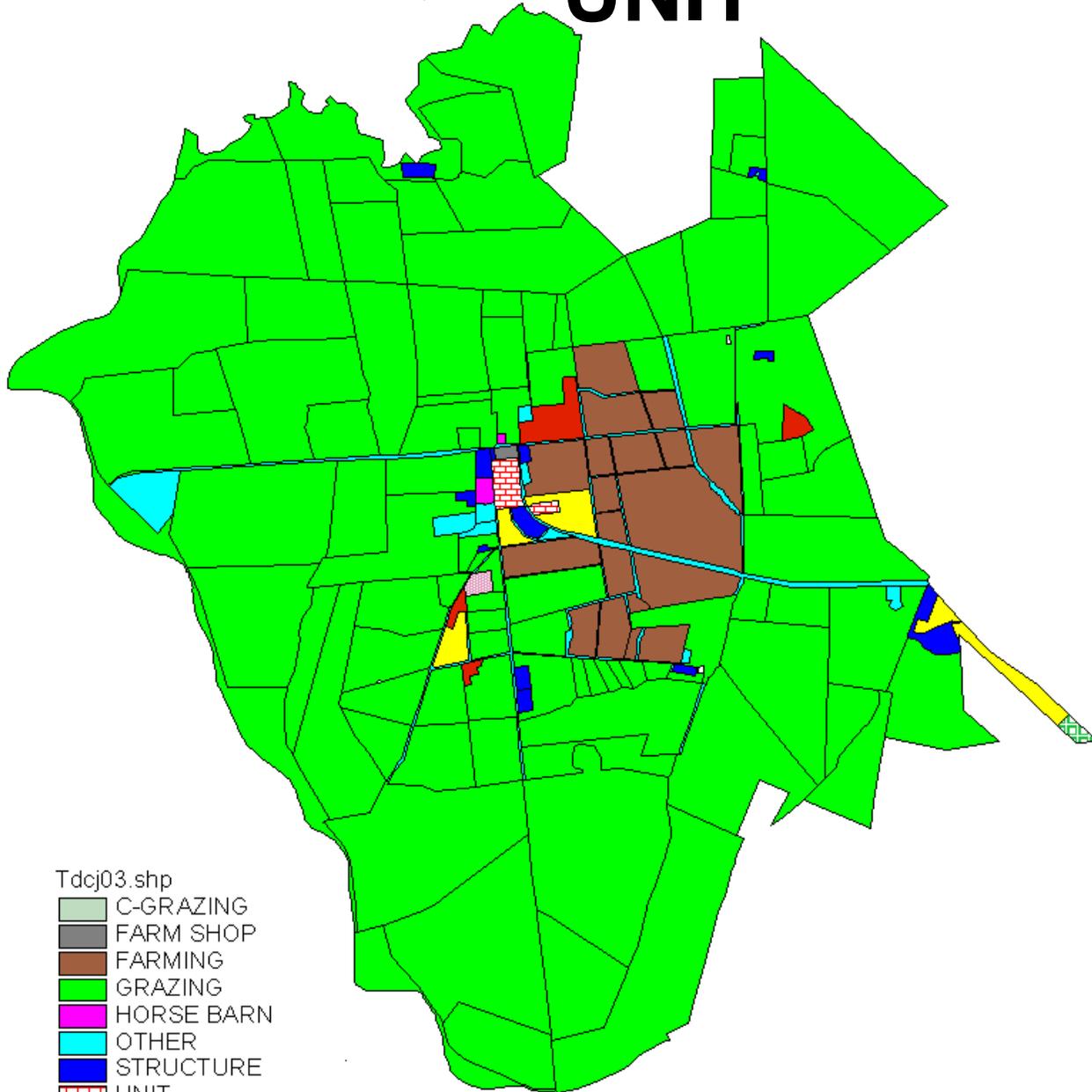
DARRINGTON UNIT

Tdcj03.shp

- C-GRAZING
- FARM SHOP
- FARMING
- GRAZING
- HORSE BARN
- OTHER
- STRUCTURE
- UNIT
- C-FARMING
- HOG BARN
- CHICKEN HOUSE
- HAY
- TIMBER

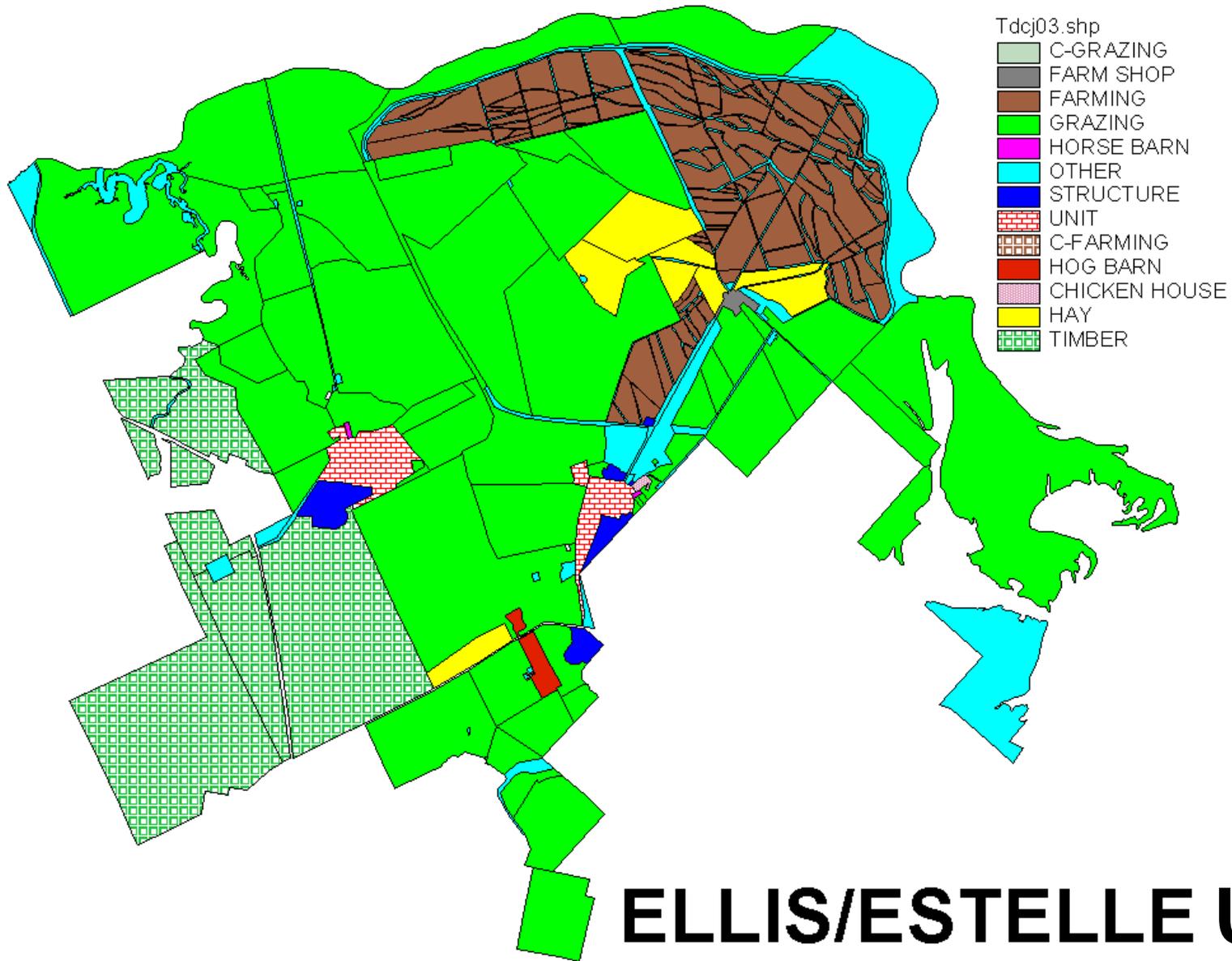


EASTHAM UNIT

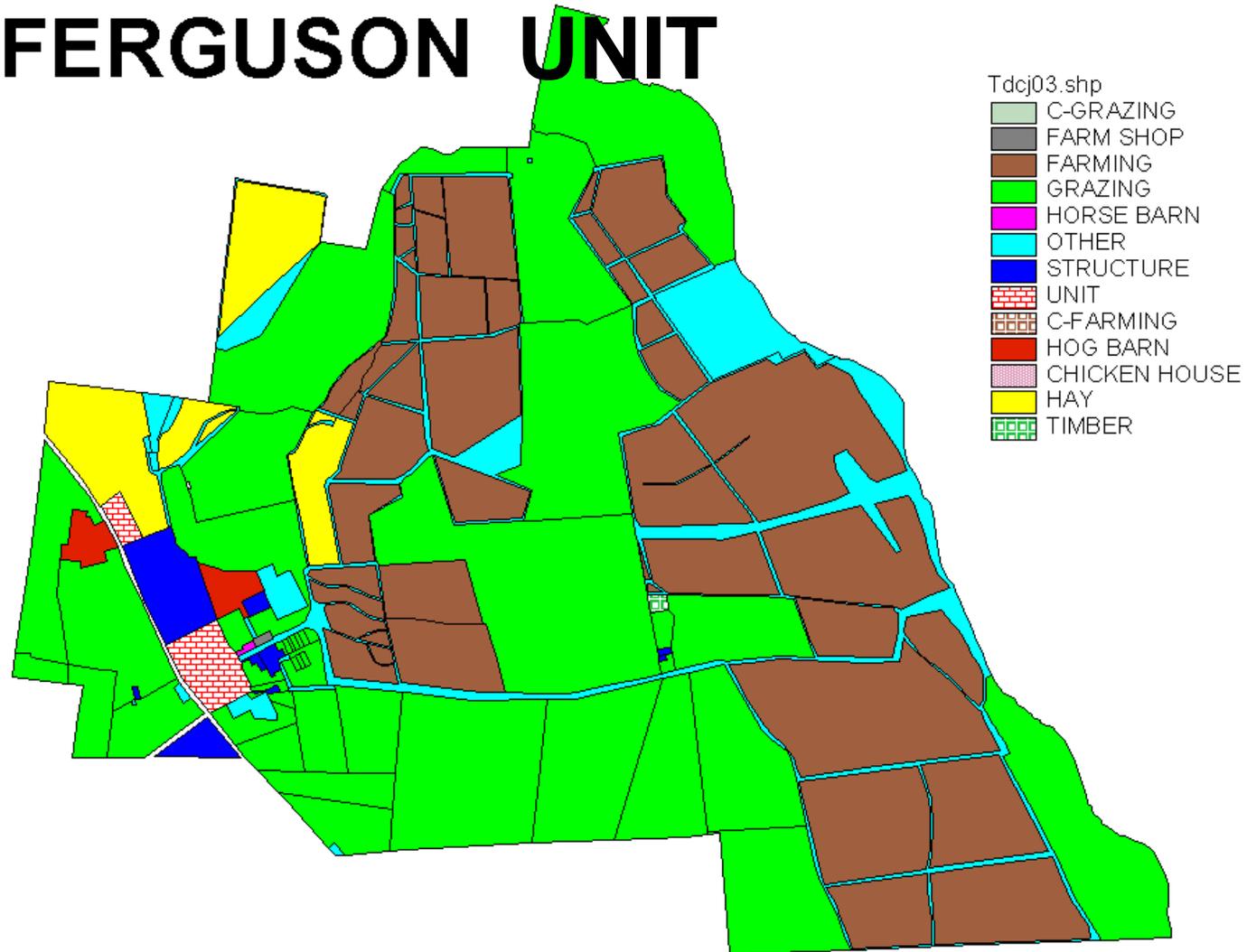


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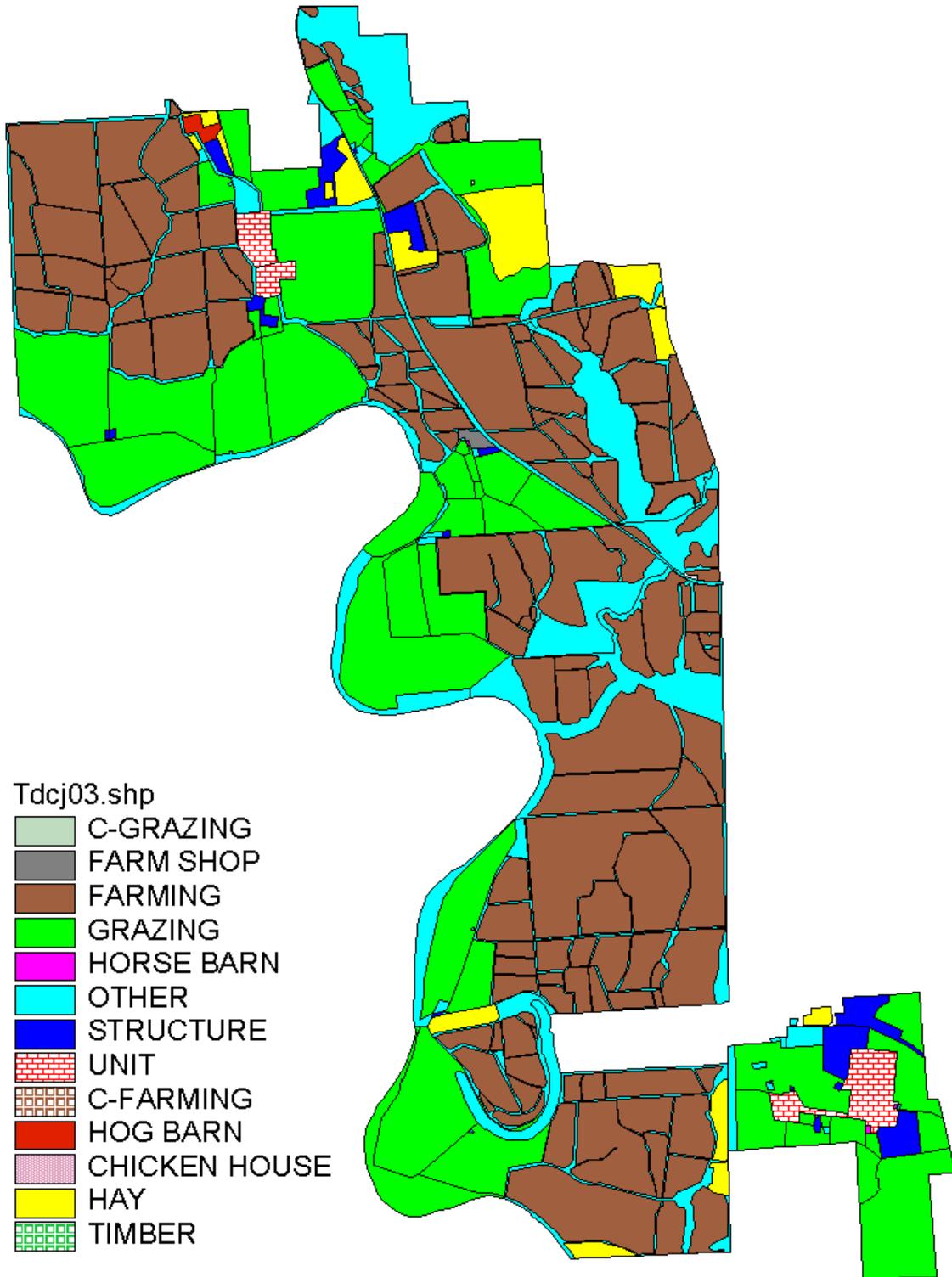
-  C-GRAZING
-  FARM SHOP
-  FARMING
-  GRAZING
-  HORSE BARN
-  OTHER
-  STRUCTURE
-  UNIT
-  C-FARMING
-  HOG BARN
-  CHICKEN HOUSE
-  HAY
-  TIMBER

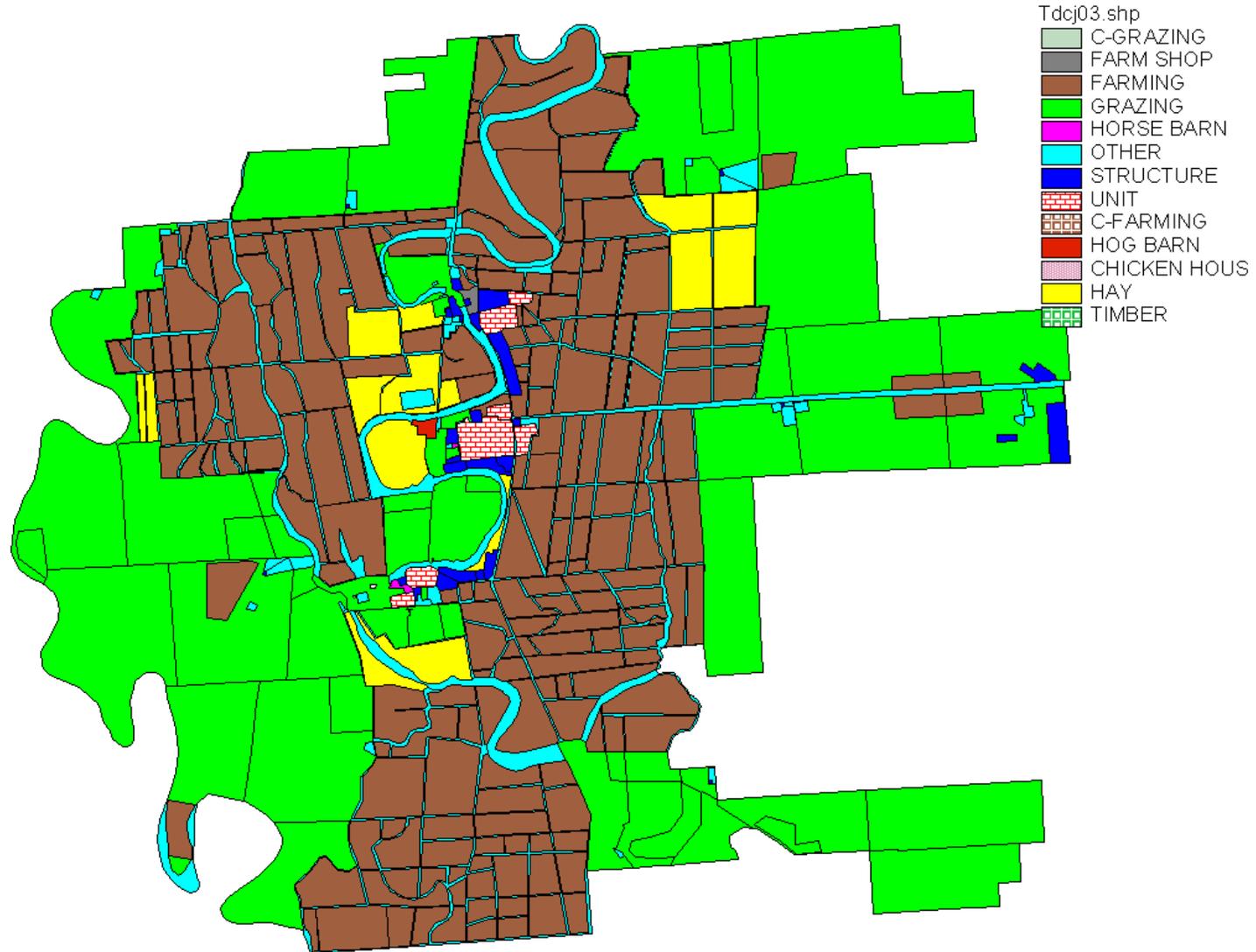


FERGUSON UNIT



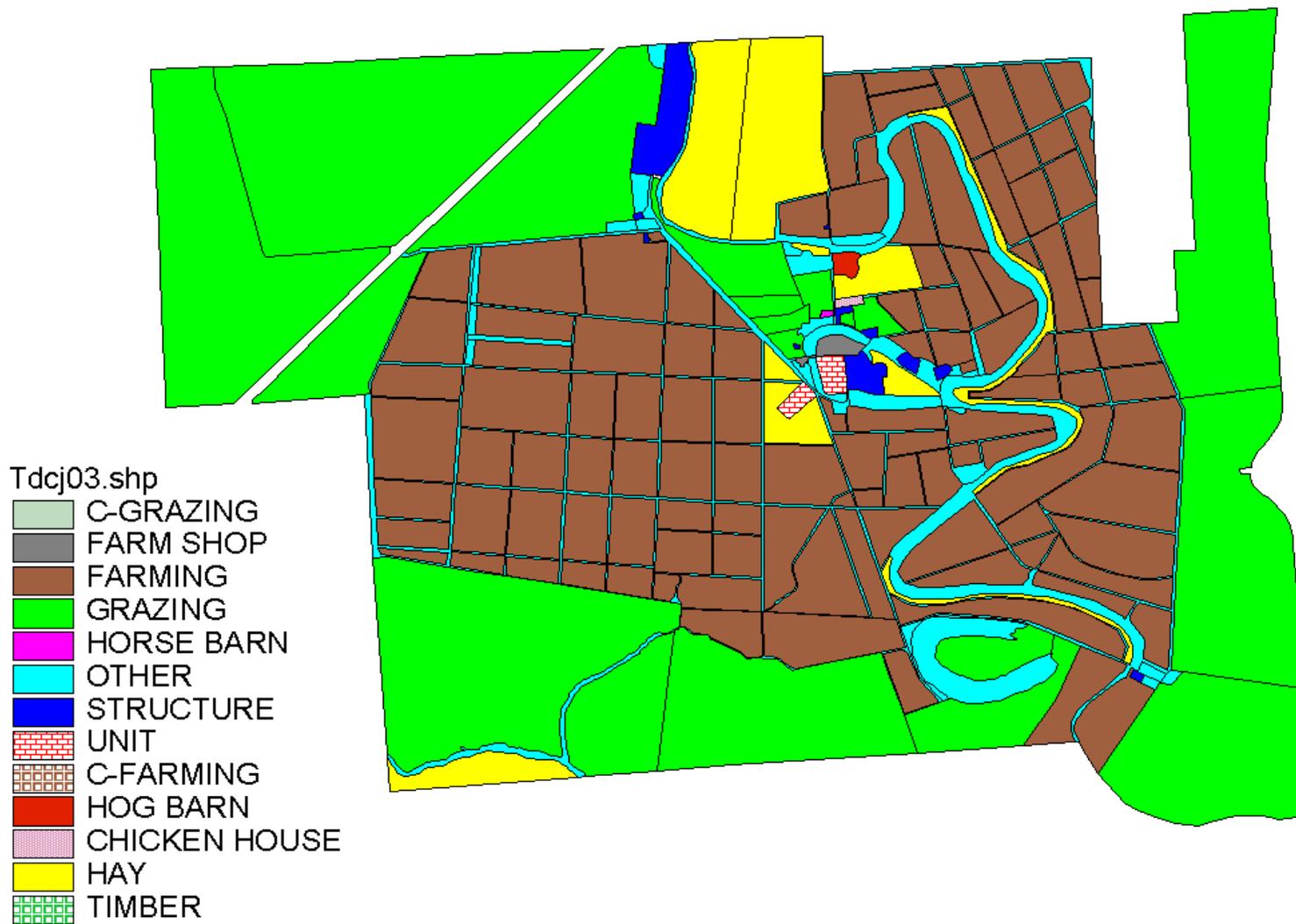
PACK/LUTHER UNITS





RAMSEY UNIT

SCOTT UNIT



SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF BIDDERS

(NOTE TO BIDDER: RESPONSES MUST BE SUBMITTED ON THESE ORIGINAL FORMS, AS THEY BECOME, AND ARE INCORPORATED BY REFERENCE, PART OF THE CONTRACT FOR THE AWARDED CONTRACTOR)

K.1 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION**K.1.1 Definition**

- A. "Historically Underutilized Business (HUB)" means an entity with its principal place of business in this State that is:
1. A corporation formed for the purpose of making a profit in which fifty-one percent (51%) or more of all classes of the shares of stock or other equitable securities are owned by one (1) or more Economically Disadvantaged Persons who have a proportionate interest and actively participate in the corporation's control, operation and management;
 2. A sole proprietorship created for the purpose of making a profit that is completely owned, operated and controlled by an Economically Disadvantaged Person;
 3. A partnership formed for the purpose of making a profit in which fifty-one percent (51%) or more of the assets and interest in the partnership are owned by one (1) or more Economically Disadvantaged Persons who have a proportionate interest and actively participate in the partnership's control, operation, and management;
 4. A joint venture in which each entity in the venture is a HUB, as determined under another paragraph of this subdivision; or
 5. A supplier contract between a HUB as determined under another paragraph of this subdivision and a prime Bidder under which the HUB is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods.
- B. "Economically Disadvantaged Person" means a person who is economically disadvantaged because of the person's identification as a member of a certain group including Black Americans, Hispanic Americans, Women, Asian Pacific Americans, Native Americans and Service-Disabled Veterans who has suffered the effects of discriminatory practices or other similar insidious circumstances over which the person has no control.

K.1.2 HUB Representation

The Bidder represents and certifies as part of its bid that it [] is, or [] is not, a HUB certified by the Texas Statewide Support Services Division.

K.2 CHILD SUPPORT REPRESENTATION

- A. Under Texas Family Code, Section 231.006, a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from State funds under a contract to provide property, materials or services.

- B. Governmental entities and any business entity, including a non-profit corporation, that does not have a majority shareholder who is a natural person capable of being a child support obligor, are not subject to Texas Family Code, Section 231.006.

Check ONE:

_____ Bidder DOES NOT have a sole proprietor, majority stockholder or substantial owner who is a natural person capable of being a child support obligor therefore IS NOT subject to Texas Family Code, Section 231.006.

_____ Bidder DOES have a sole proprietor, majority stockholder or substantial owner who is a natural person capable of being a child support obligor therefore IS subject to Texas Family Code, Section 231.006.

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Texas Family Code, Section 231.006 requires a bid or an application for a contract, grant, or loan paid from State funds to include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) of the business entity submitting the bid or application. The Social Security number(s) will be kept confidential and only disclosed in accordance with Texas Family Code, Section 231.302.

Print Name	SSN	Print Name	SSN
Print Name	SSN	Print Name	SSN

The Bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified Payments and acknowledges that any resultant Contract may be terminated and Payment may be withheld if this certification is inaccurate.

K.3 FRANCHISE TAX REPRESENTATION

The Bidder represents and certifies, as part of its bid that it is not currently delinquent in the payment of any franchise tax owed the State of Texas.

K.4 TYPE OF BUSINESS ORGANIZATION

The Bidder, by checking the applicable box, represents that:

- A. It operates as a corporation incorporated under the laws of the State of _____, an individual, a partnership, a nonprofit organization or a joint venture; or
- B. If the Bidder is a foreign entity, it operates as an individual, a partnership, a nonprofit organization, a joint venture, or a corporation, registered for business in _____ (country).

K.5 PREFERENCE CLAIM

In accordance with Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D, Division 2, Rule 20.306, the Bidder shall check below if claiming a preference. If the appropriate line is not marked, a preference will not be granted unless other documents included in the bid show a right to the preference.

K.5.1 Source and Specification Preferences

- Products of persons with mental or physical disabilities.
- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel.
- Energy efficient products.
- Rubberized asphalt paving material.
- Recycled motor oil and lubricants.

K.5.2 Tie-Bid Preferences

- Goods produced or offered by a Texas bidder that is owned by a Texas Resident Service-Disabled Veteran.*
- Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas Resident Service-Disabled Veteran.*
- Agricultural products produced or grown in Texas.
- Agricultural products or services offered by Texas bidders.*
- Services offered by a Texas bidder that is owned by a Texas Resident Service-Disabled Veteran.*
- Services offered by a Texas bidder that is not owned by a Texas Resident Service-Disabled Veteran.*
- Texas vegetation native to the region.
- USA produced supplies, materials, equipment or agricultural products.

K.5.3 Additional Preferences

- Products produced at facilities located on formerly contaminated property.
- Products and services from economically depressed or blighted areas.
- Vendors that meet or exceed air quality standards.
- Recycled or reused computer equipment of other manufacturers.
- Foods of higher nutritional value (for consumption in a public cafeteria only).

*By signing this proposal, the Bidder certifies that if a Texas address is shown as the address of the Contractor, the Contractor qualifies as a Texas resident bidder as defined in Texas Government Code, Section 2155.444(c).

K.6 REPRESENTATIONS OF BIDDER

The Bidder represents and warrants to and for the benefit of the Department, with the intent that the Department will rely thereon for the purposes of entering into this Contract, as follows:

K.6.1 Organization and Qualification

If the Bidder operates as a corporation incorporated under the laws of any State outside Texas, it is duly qualified to do business as a foreign corporation in good standing in Texas.

K.6.2 Authorization

This Contract has been duly authorized, executed and delivered by the Bidder and, assuming due execution and delivery by the Department, constitutes a legal, valid and binding agreement enforceable against the Bidder in accordance with its terms.

K.6.3 No Violation of Agreements, Articles of Incorporation or Bylaws

The consummation of the transactions contemplated by this Contract and the fulfillment of the terms hereof will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license or permit or other agreement or instrument to which the Bidder is a party or by which its properties are bound, or any order, rule or regulation of any court or any regulatory body, administrative agency or other governmental body applicable to the Bidder or any of its properties, except any such conflict, breach, or default which would not materially and adversely affect the Bidder's ability to perform its obligations under this Contract, and will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under, the Articles of Incorporation (or other corresponding charter document) or Bylaws of the Bidder.

K.6.4 No Defaults under Agreements

The Bidder is not in default, nor is there any event in existence which, with notice or the passage of time or both, would constitute a default by the Bidder under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license or permit or other agreement or instrument to which it is a party or by which any of its properties are bound and which default would materially and adversely affect the Bidder's ability to perform its obligations under this Contract.

K.6.5 Compliance with Laws

Neither the Bidder nor its officers and directors purporting to act on its behalf have been advised or have reason to believe that the Bidder or such officers and directors have not been conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which the Bidder is conducting business, including all safety laws and laws with respect to discrimination in hiring, promotion or pay of employees or other laws affecting employees generally, except where failure to be in compliance would not materially and adversely affect the Bidder's ability to perform its obligations under this Contract.

K.6.6 No Litigation

- A. The Bidder certifies that there is not now pending, or to its knowledge threatened, any action, suit or proceeding to which the Bidder or any of its employees, are a party, before or by any court or governmental agency or body, which may result in any material adverse change in the Bidder's ability to perform its obligations under this Contract, or any such action, suit or proceeding related to environmental or civil rights matters.

- B. The Bidder further certifies that no labor disturbance by the employees of the Bidder exists or is imminent which may be expected to materially and adversely affect the Bidder's ability to perform its obligations under this Contract.
- C. Prior to the Department making an award of this Contract, the Department may require Bidder being considered for the award to recertify the representations set forth above. The Department, in its sole discretion, may disqualify any Bidder that in the opinion of the Department is a party, or who has any employees that are a party, to any action, suit or proceeding that may result in any material adverse change in Bidder's ability to perform its obligations under this Contract.
- D. During the Contract Term, to include extensions hereof, the Bidder shall notify the Department in writing within five (5) days of the Bidder having received knowledge of any actions, suits or proceedings filed against the Bidder, or any of its employees, or to which the Bidder, or any of its employees, are a party, before or by any court or governmental agency or body, which:
 - 1. May result in any material adverse change in the Bidder's ability to perform its obligations under this Contract;
 - 2. Filed in any federal court, state court, or federal or state administrative hearing within the State of Texas regardless as to any anticipated material adverse change in the Bidder's ability to perform its obligations under this Contract;
 - 3. Is brought by or on behalf of a State of Texas Offender regardless as to any anticipated material adverse change in the Bidder's ability to perform its obligations under this Contract; and
 - 4. The Contractor shall provide in writing, to the Contract Specialist, a quarterly report listing litigation identified in the above requirements.

K.6.7 Taxes

- A. The Bidder has filed all necessary federal, state and foreign income and franchise tax returns and has paid all taxes as shown to be due thereon.
- B. The Bidder has no knowledge of any tax deficiency which has been or might be asserted against it and which would materially and adversely affect the Bidder's ability to perform its obligations under this Contract.
- C. The Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of the Contractor or its employees.

K.6.8 Disclosure

There is no material fact which materially and adversely affects or in the future will (so far as the Bidder can now reasonably foresee) materially and adversely affect its ability to perform its obligations under this Contract which has not been accurately set forth in this Contract or otherwise accurately disclosed in writing to the Department by the Bidder prior to the date hereof.

K.6.9 No Collusion

- A. The Bidder represents and certifies its employees, agents and representatives have not and shall not discuss or disclose the terms of their bid and its submission or response thereto with any third party other than persons or entities, which the Bidder engaged to assist it with respect to such response or submission.
- B. Neither the Bidder nor the firm, corporation, partnership or institution represented by the Bidder or anyone acting for such firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly, the bid made to any competitor or any other person engaged in such line of business.

K.6.10 Ethics**K.6.10.1 Conflict of Interest**

Pursuant to Texas Government Code, Section 572.051, any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established. Texas Government Code, Section 572.051, outlines the ethical standards required of State officers and employees who interact with public purchasers in the conduct of State business.

Specifically, a Department employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the State; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Entities who are interested in seeking business opportunities with the state must be mindful of these restrictions when interacting with public purchasers of the Department or purchasers of other State agencies.

K.6.10.2 Disclosure of Interested Parties

In accordance with Texas Government Code 2252.908, a governmental entity or state agency may not enter into a contract valued at \$1,000,000.00 or greater with a business entity unless the business entity, in accordance with Texas Administrative Code, Title 1, Part 2, Chapter 46, Rules 46.1, 46.3 and 46.5, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

The disclosure of interested parties must be submitted on a form, and in a manner, prescribed by the Texas Ethics Commission. The Disclosure of Interested Parties Form (Form 1295) and instructions may be found at: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

K.6.10.3 No Gratuities

The Bidder represents that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal.

K.6.11 No Compensation

Pursuant to Texas Government Code, Section 2155.004 the Bidder has not received compensation for participation in the preparation of the specifications for this bid. Under Texas Government Code, Section 2155.004, the Bidder certifies that the individual or business entity named in this Solicitation or the Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and Payment withheld if this certification is inaccurate.

K.6.12 Contracting with Executive Head of State Agency

- A. The Bidder represents and certifies that they are in compliance with Texas Government Code, Section 669.003, relating to contracting with the executive head of a State Agency.
- B. If Texas Government Code, Section 669.003 applies, Bidder shall complete the following information in order for the Bid to be evaluated:

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Date of Employment with Bidder: _____

K.6.13 Limitation on Employment of Former State Officers

The Bidder represents that they are in compliance with Texas Government Code, Section 572.069 relating to employment of a former state officer or employee. A former State officer or employee of the Department who during the period of State service or employment participated on behalf of the Department on a procurement or contract negotiation involving a business entity may not accept employment from that business entity before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.

K.6.14 Notification

If any of the information provided in the above representations changes during the term of this Contract, the Contractor shall submit an updated representation as soon as is reasonably possible.

K.6.15 Suspension, Debarment and Terrorism

The Department is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM, <https://www.sam.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

K.6.16 Prohibition of a State Agency Contracting with Companies that Boycott Israel

The Contractor certifies that they are in compliance with Texas Government Code, Chapter 2270 relating to the prohibition of a State Agency contracting with companies that boycott Israel or boycotts Israel during the term of the Contract. The Contractor certifies that the individual or business entity named in this proposal or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and Payment withheld if this certification is inaccurate.

K.6.17 Prohibition of a State Agency Contracting with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations

The Contractor certifies that they are in compliance with Texas Government Code, Chapter 2252.152 relating to the prohibition of a State Agency contracting with companies that are engaged in business with Iran, Sudan, or foreign terrorist organizations. The Contractor certifies that the individual or business entity named in this proposal or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and Payment withheld if this certification is inaccurate.

K.6.18 Violation of Federal Law Relating to Reconstruction Efforts as a Result of Hurricanes Rita, Katrina or any Other Disaster After September 24, 2005

Pursuant to Texas Government Code, Section 2261.053, a State Agency may not accept a proposal or award a contract, including a contract for which purchasing authority is delegated to a State Agency, that includes proposed financial participation by a person who, during the five (5) year period preceding the date of the proposal or award, has been convicted of violating a federal law or assessed a penalty in a federal, civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricane Rita, Katrina or any other disaster occurring after September 24, 2005. Under Texas Government Code, Section 2261.053, the Contractor certifies that the individual or business entity named in this proposal or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and Payment withheld if this certification is inaccurate.

K.6.19 Deceptive Trade Practices; Unfair Business Practices

The Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice violations under Texas Business and Commerce Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that the Contractor has not been found to be liable for such practices in such proceedings. The Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

K.7 REPRESENTATIONS OF THE DEPARTMENT

The Department represents and warrants to and for the benefit of the Bidder with the intent that the Bidder will rely thereon for the purposes of entering into this Contract as follows:

K.7.1 Authorization

The Department has the requisite power to enter into this Contract and perform its obligations thereunder and by proper action has duly authorized the execution, delivery and performance hereof.

K.7.2 No Violation of Agreements

The consummation of the transactions contemplated by this Contract and the fulfillment of the terms hereof will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under any indenture, mortgage, deed of trust, lease, loan agreement, security agreement, contract or other agreement or instrument to which the Department is a party or by which its properties are bound, or any order, rule or regulation of any court or any regulatory body, administrative agency or other governmental body applicable to the Department or any of its properties, except any such conflict, breach or default which would not materially and adversely affect the Department's ability to perform its obligations under this Contract.

K.7.3 Disclosure

There is no material fact which materially and adversely affects or in the future will (so far as the Department can now reasonably foresee) materially and adversely affect its ability to perform its obligations under this Contract or which might require changes in or additions to the Services required under this Contract that would increase the cost to the Bidder of providing such Services, which has not been accurately set forth in this Contract or otherwise accurately disclosed in writing to the Bidder by the Department prior to the date hereof.

K.8 PAYEE IDENTIFICATION NUMBER

The Payee Identification Number is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. The Bidder shall provide its Payee Identification Number in the space provided below. If this number is not known, the Bidder shall provide the Federal Taxpayer Identification Number.

Payee Identification Number: _____ or

Federal Taxpayer Identification Number: _____.

K.9 POINT OF CONTACT

The Bidder shall provide the name, title, phone number, fax number, address and e-mail address of a point-of-contact for questions concerning the submitted proposal.

Name: _____ Title: _____

Phone Number: (____) _____ Fax Number: (____) _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

E-mail Address: _____

K.10 CERTIFICATION

To be completed by the Bidder: (The Bidder must check or complete all appropriate boxes or blanks in the Representations and Certifications, on the preceding pages). The Representations and Certifications must be executed below by an individual authorized to bind the Bidder.

The Bidder makes the foregoing Representations and Certifications as part of its bid.

	696-AG-19-B017
Name of Bidder	Solicitation No.

Signature of Authorized Individual	Date

 Typed Name of Authorized Individual

Note: The penalty for making false statements shall void the submitted bid or any resulting Contracts, and the Bidder shall be removed from all bid lists.

SECTION L – INSTRUCTIONS, CONDITIONS AND NOTICES TO BIDDERS**L.1 AMENDMENTS TO SOLICITATIONS**

- A. If this Solicitation is amended, all terms and conditions which are not modified remain unchanged.
- B. The Department will post amendment(s) to this Solicitation for downloading in .pdf format via the Texas Electronic State Business Daily (ESBD) at the following address: <http://www.txsmartbuy.com/sp>.
- C. Bidders shall acknowledge receipt of all amendment(s) to this Solicitation by signing and returning the amendment(s); identifying the amendment number and date provided for this purpose in Block 8 of the Solicitation, Offer and Award form; or by letter or e-mail.
- D. The Department must receive acknowledgement by the time specified for receipt of bids.
- E. Failure to acknowledge amendment(s) may subject bid to rejection.

L.2 LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF BIDS

- A. Bids must be time stamped at the office designated in this Solicitation on or before the hour and date specified.
- B. Any bid received at the designated location after the exact date and time specified will not be considered.
- C. Bids cannot be altered, amended or modified by telegram, fax or otherwise after opening time.
- D. Alterations made before opening time should be initialed by the Bidder or its authorized agent.
- E. Bids cannot be withdrawn after the opening date and time without approval by the Department based on an acceptable written reason.

L.3 SIGNATURES ON BID SUBMITTED

- A. Bids from a partnership shall be signed in the firm name by at least one general partner or in the firm name by an Attorney-in-fact.
- B. If signed by an Attorney-in-fact there shall be attached to the Bid a Power of Attorney evidencing the authority to sign the Bid, dated and executed by all partners in the firm.
- C. Bids from a corporation shall have the correct corporate name thereon and the signature of an authorized officer of the corporation.
- D. The title of office held by the person signing for the corporation shall appear below the signature of the officer.
- E. Bids from an individual doing business under a firm or fictitious name shall be signed in the name of the individual doing business under the proper firm name.

- F. Bids from a joint venture shall be signed by all members or by a member of the joint venture if there is attached to the Bid a copy of the Joint Venture Agreement evidencing that the Bid is signed by the member who has authority to bind the joint venture.
- G. Unsigned bids will not be considered under any circumstances.

L.4 BID ACCEPTANCE PERIOD

- A. All bids will be valid for one hundred fifty (150) days after the submission date and will constitute an irrevocable bid to the Department for the one hundred fifty (150) day period.
- B. Such period may be extended beyond the one hundred fifty (150) day period upon mutual agreement of both parties.

L.5 CONTRACT AWARD

- A. The Department will award a Contract(s) resulting from this Solicitation to the responsible Bidder(s) whose bid(s), conforming to this Solicitation, will be most advantageous to the Department considering only price.
- B. The Department may accept or reject all or any part of any bid, waive minor technicalities and award the Contract(s) to best serve the interest of the Department.
- C. A written award or acceptance of bid mailed or otherwise furnished to the successful Bidder within the time for acceptance specified in the bid shall result in a binding Contract(s) without further action by either party.
- D. Attaching additional terms and conditions or conditioning a bid in any manner will subject a bid to rejection if the terms are not in accordance with this Invitation for Bids.
- E. The Department reserves the right, at its sole discretion, to make multiple Contract awards from this Solicitation. The Department reserves the right to make no awards in the event of inconsistent rates and/or the absence of available competition.

L.6 RIGHTS OF THE DEPARTMENT

- A. The Department reserves the right to waive, change, add or delete any terms or conditions of this Solicitation.
- B. The Department reserves the right to reject any one bid and/or all bids or portions of bids submitted in response to this Solicitation.
- C. The submission of a bid has the effect of waiving proprietary rights or confidentiality.
- D. All bids become the property of the Department.
- E. The Department reserves the right to use for its benefit ideas contained in a bid submitted.

- F. The Department is not liable for any costs or damages that may be incurred by a Bidder(s) or prospective Bidder(s) in the preparation, formulation or presentation of a bid.
- G. In case of ambiguity or lack of clarity, the Department may adopt such interpretations as may be advantageous to the Department.
- H. All representations made by the Department are subject to the availability of legislative appropriations and do not represent an obligation on the part of the State of Texas, the Department or the TBCJ.
- I. The Department reserves the right to withdraw this Solicitation at any time for any reason.
- J. The Department reserves the right to award no Contract and to solicit additional bids at a later time.
- K. The Department incurs no obligation regarding this Solicitation unless and until a Contract is fully executed by the Department.

L.7 LEGISLATIVE BUDGET BOARD (LBB) POSTINGS

Any part of the solicitation response that is of proprietary nature must be clearly and prominently marked as such by the Bidder. **For major contracts, the bid submitted by the awarded Contractor is subject to public access on the Legislative Budget Board's website in accordance with Texas Government Code, Section 322.020. Within five (5) business days of awarded Contractor's receipt of the Contract for signature, the awarded Contractor must deliver to the Department Contracts and Procurement Department one (1) CD or USB flash drive of its complete bid to include clarification. The CD or flash drive must contain a copy of the awarded Contractor's complete bid, in searchable pdf format, which has been excised, blacked out, or otherwise redacted information from its complete bid that the awarded Contractor considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code (this should be a de Minimis portion, if any of the Contract's bid, such as copyrighted material, proprietary information, social security numbers, deployment plans, shift staffing plans, etc.) the CD or flash drive shall also contain an appendix for the Contractor's complete proposal which provides a cross reference for the location of all information redacted by the Contractor and a general description of the redacted information. The CD or flash drive should be entitled "For Public Release: Redacted Version of [Name of awarded Contractor]'s Bid and Exhibits, the Department Solicitation Number 696-AG-19-B017".**

L.8 SUBMISSION OF BIDS

- L.8.1 Bids and amendments shall be submitted with an unbound original and two (2) copies in sealed envelopes prior to the bid opening date and time with the solicitation number annotated immediately below the returned address on the envelope. Sealed bids shall be submitted to the address noted in Block 5 of the Solicitation, Offer and Award form. Faxed bids will **not** be accepted.

Bids shall be organized in three sections as detailed below. All sections and required documentation must be typed or printed on 8.5" x 11" paper. Failure to submit all required documentation by bid opening date may result in disqualification of the bid from further consideration.

L.8.2 Section 1 - Contract Forms

Bidder is required to complete the following Contract sections and provide original signature, where applicable:

- A. Section A, Solicitation, Offer and Award Form (with acknowledgement of amendments);
- B. Section B.2, Pricing Schedule;
- C. Section G.2.4, Program Director;
- D. Section G.4.F, Remittance Address (if applicable);
- E. Section K, Representations, Certifications and Other Statements; and

L.8.3 Section 2 – Information Section

Bidder, as part of the bid response, shall submit the following:

- A. Names, addresses, contact persons, telephone numbers and e-mail address of a minimum of three (3) businesses, including government agencies (local, state and federal), with which the Bidder has had a contract for the specified services in Section C within the three (3) year period immediately preceding submission of the bid. If Bidder has not contracted with any government agencies, a minimum of three (3) references from current and/or past customers shall be submitted. The Department reserves the right to contact all references. Such references should be for services contracted in a dollar amount and complexity equal to or greater than this Contract and shall include the approximate acreage contracted for.
- B. Financial references to include the name, address, telephone number, e-mail address and point-of-contact of at least two (2) firms to include one reference from Bidder's banking institution and at least one (1) reference from a creditor. Bidder shall furnish a signed document permitting release of financial information to the Department from each financial reference listed.
- C. The name and address of the Bidder's professional liability insurance carrier, along with a statement of liability from the carrier(s) issuing the policies that such policies are available to the Bidder. For the purpose of responding to this Solicitation, Bidder will not be required to purchase insurance, but must show the ability to provide such insurance as specified in Section H.1 if the Bidder is selected for award of the Contract.

L.8.4 Section 3 – Technical

Bidder shall provide detailed proof of its ability to provide Services that are responsive to the requirements specified in Section C.3. This section shall contain, as a minimum, the following:

- A. The make, model and boom length of the planes that will be utilized in performing Services and the number of planes that will be available during the peak spraying period (Section C.3.1.A). The Bidder shall include the number of spray nozzles on each plane.
- B. The description of the flagging system that will be available (Section C.3.1.E) and disclosure of if the bidder will be able to provide equipment for closed system mixing and loading (Section

C.3.1.C).

- C. The names of pilots to be utilized to perform Services along with their number of years of agriculture flying experience and their Texas Department of Agriculture Commercial Applicator License number (Section C.3.1.H).

L.9 DETERMINATION OF RESPONSIBLE BIDDER

To be determined responsible, a prospective Contractor must meet the following requirements:

- A. Provide proof of adequate financial resources to perform the Contract or the ability to obtain them;
- B. Be able to comply with the required performance schedule, taking into consideration all existing commercial and governmental business commitment;
- C. Provide proof of a satisfactory performance record;
- D. Have a favorable record of integrity and business ethics based upon input from references required in Section L.8.3; and
- E. Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

L.10 DISCUSSION AND CORRESPONDENCE

All communications and questions concerning this Solicitation, including any of a technical nature, must be made in writing to:

Steven Tilley
 Texas Department of Criminal Justice
 Contracts and Procurement Department
 Client Services and Governmental Contracts Branch
 Two Financial Plaza, Suite 525
 Huntsville, Texas 77340
 Phone: (936) 437-7115
 Fax: (325) 223-0310
 E-mail: steven.tilley@tdcj.texas.gov

Questions concerning any technical aspect of the solicitation must be submitted in writing (fax transmission is acceptable). Written answers to the questions will be provided to all parties requesting a copy of the IFB through the Contracts and Procurement, Client Services and Governmental Contracts Branch of the Department. Bidders should only rely on the written information provided in this manner. Bidders are specifically barred from making contact with any Department personnel involved in this IFB for the purpose of discussing their bid.

Bidders are reminded that March 27, 2019 (5:00 p.m.) is the last day to submit written questions for clarification by the Department. The Bidder is specifically cautioned against relying on any oral information. The responsiveness of each bid will be evaluated upon instructions given in the IFB and any amendments thereto. Unauthorized contact with the Department personnel could result in the bid being rejected in its entirety.

L.11 SUMMARY OF KEY DATES

March 27, 2019	Deadline for submitting written questions
April 8, 2019	Bid Opening Date
April 26, 2019	Contract Award
May 1, 2019	Service Commencement Date

SECTION M – EVALUATION FACTORS FOR AWARD**M.1 SELECTION PROCESS**

- A. The Department will evaluate bids received in response to this Solicitation without discussions and will award a Contract to the responsible Bidder(s) whose bid, conforming to the Solicitation, will be most advantageous to the Department considering only price.
- B. In accordance with Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter C, Rule 20.31 (b) (c), the Department may negotiate if the Department receives only one (1) acceptable bid, or no acceptable bids, providing that the negotiations do not result in a material change to the advertised specifications.
- C. In the event of tie bids, the preferences certified in Section K.5 will be used to break the tie. In the event of tie bids where all preferences are equal, award will be made by drawing lots.
- D. In accordance with Texas Government Code, Sections 2155.074 and 2155.075, vendor performance may be used as a factor in the award. A Bidder's past performance will be measured based upon pass/fail criteria in compliance with applicable provisions of Texas Government Code, Sections 2155.074, 2155.075, and 2156.007. Bidders may fail this selection criterion for any of the following conditions:
 - 1. A score of less than 'C' or Legacy Unsatisfactory in the Vendor Performance System;
 - 2. Currently under a Corrective Action Plan through the Texas Comptroller of Public Accounts;
 - 3. Having repeated negative Vendor Performance Reports for the same reason; or
 - 4. Having purchase orders or contracts that have been cancelled in the previous twelve (12) months for non-performance (i.e. late delivery, etc.).

Contractor performance information is located on the Texas Comptroller of Public Accounts website at: <http://www.txsmartbuy.com/vpts>.

The Department may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter C, Division 2, Rule 20.208), the Department may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of the Department, and any negative findings, as determined by the Department, may result in non-award to the Bidder.