

**LAWN AND LANDSCAPING SERVICES CONTRACT**

This Lawn and Landscaping Services Contract (Contract) is made by and between the State of Mississippi Department of Finance and Administration (DFA), Office of Insurance (Office), and \_\_\_\_\_, (Contractor) effective March 1, 2021, under the following terms and conditions under which the Contractor agrees to provide services to DFA.

**1. Scope of Services**

The Contractor shall provide lawn and landscaping services at the Museum District which includes the grounds adjacent to the Mississippi Museums, the William Winter Building, the Winter Central Mechanical Plant; the Old Capitol Green area consisting of the War Memorial Building, the Old Capitol, and the Charlotte Capers Office Building; the GM&O Depot/Naval Reserve Record Center, including the Jefferson Street Parking Lot; the Central High School Grounds; and, the Joseph Properties located at 620 and 660 North State Street and 700 North State Street on a scheduled basis. All work of this contract shall be performed under the direct supervision of experienced and qualified Contractor personnel. The services to be provided through this Contract are as listed below:

**A. William Winter Building / Museums Grounds**

This area shall include maintenance of all grounds to edge of curb of adjacent City of Jackson streets, including landscaped and hardscaped areas as well as associated parking areas and drives on property operated and maintained by DFA, Office of Capitol Facilities in Jackson, Mississippi as defined in Figure 1-1 of the *William F. Winter Building and Two Mississippi Museums Landscape Management Plan* (Appendix D). All work as defined and scheduled in Sections 3, 4, and 5 including Appendix A of this *Landscape Management Plan* shall be included with the following modifications:

1. Weed Removal, utilizing physical removal and/or post-emergent herbicides as required, at all sidewalks, hardscape and paved areas shall be included.
2. Blowing off promptly of grass clippings and any other debris generated by lawn or landscape maintenance activities shall be included.
3. Regular Tree Pruning as defined in 5.4.1 of the *Landscape Management Plans* (Appendix D) shall be included, however; Tree Removal, Bolting or Cabling is excluded.
4. Lawn Irrigation as defined in 5.1.1 and 6 of the *Landscape Management Plans* (Appendix D) shall be included in the scope of work of this contract with the exception of the last sentence of Section 5.1.1 concerning financial constraints. It shall also be the responsibility of Contractor to alert the Office of Capitol Facilities promptly of any required major reports.
5. Riding lawn mowers and other heavy wheeled vehicles shall not be used on lawn at structure. Mowing on structure shall be limited to no more than 22” walk behind mower. Clippings shall be bagged and hauled off at this location. Non-structure lawn areas immediately adjacent thereto shall be similarly mowed to maintain consistent appearance.

## Appendix F – Draft Contract

6. In order to maintain the recommended heights as defined in Section 5.1.1 Lawn Cultural Practices and referenced in Table 5-1 in Appendix D, Contractor shall perform mowing during growing period on a regular basis not more frequently than every seven (7) days nor less frequently than every ten (10) days. For the purpose of this contract, growing season shall be considered the period between the first week of March and the first week of November. Mowing is required during non-growing periods, however; frequency during non-growing period may be reduced to that required to provide a consistent appearance.
7. Removal of leaves, twigs, branches and other landscape debris shall be included. All such debris shall be blown or otherwise removed from paved surfaces and parking lots in work area on a regular basis, at least as frequently as mowing occurs. All debris shall be removed from planting beds and adjacent buildings. Leaves and twigs at lawns may be mulched at time of mowing and remain on site provided quantity/build up is not excessive. Larger sticks and branches shall be bagged and/or otherwise removed from site.

### **B. Old Capitol Green Grounds**

This area shall include maintenance of all grounds to edge of curb of adjacent City of Jackson streets, including landscaped and hardscaped areas as well as associated parking areas and drives on property operated and maintained by the Department of Finance and Administration, Office of Capitol Facilities in Jackson, Mississippi as defined in Figure 1-1 of the ***Old Capitol Green Landscape Management Plan*** (Appendix E). All work as defined and scheduled in Sections 3, 4, and 5 including Appendix A of this ***Landscape Management Plan*** shall be included with the following modifications:

1. Weed Removal, utilizing physical removal and/or post-emergent herbicides as required, at all sidewalks, hardscape and paved areas shall be included.
2. Blowing off promptly of grass clippings and any other debris generated by lawn or landscape maintenance activities shall be included.
3. Regular Tree Pruning as defined in 5.4.1 of the ***Landscape Management Plans*** (Appendix E) shall be included, however; Tree Removal, Bolting or Cabling is excluded.
4. Lawn Irrigation as defined in 5.1.1 and 6 of the ***Landscape Management Plans*** (Appendix E) shall be included in the scope of work of this contract with the exception of the last sentence of Section 5.1.1 concerning financial constraints. It shall also be the responsibility of Contractor to alert the Office of Capitol Facilities promptly of any required major reports.
5. In order to maintain the recommended heights as defined in Section 5.1.1 Lawn Cultural Practices and referenced in Table 5-1 in Appendix E, Contractor shall perform mowing during growing period on a regular basis not more frequently than every seven (7) days nor less frequently than every ten (10) days. For the purpose of this contract, growing season shall be considered the period between the first week of March and the first week of November. Mowing is required during non-growing periods, however; frequency during non-growing periods may be reduced to that required to provide a consistent appearance.

## Appendix F – Draft Contract

6. Removal of leaves, twigs, branches and other landscape debris shall be included. All such debris shall be blown or otherwise removed from paved surfaces and parking lots in work area on a regular basis, at least as frequently as mowing occurs. All debris shall be removed from planting beds and adjacent buildings. Leaves and twigs at lawns may be mulched at time of mowing and remain on site provided quantity/build up is not excessive. Larger sticks and branches shall be bagged and/or otherwise removed from site.

### C. GM&O Depot / Naval Reserve Record Center Grounds

This area shall include maintenance of all grounds to edge of curb of adjacent City of Jackson streets, including landscaped and hardscaped areas as well as associated parking areas and drives on property operated and maintained by DFA, Office of Capitol Facilities in Jackson, Mississippi that lies between the Old Capitol Green area to the west and Jefferson Street to the east. This area includes the parking lot and grounds south of the Mississippi Department of Agriculture and Commerce (MDAC), but not the MDAC Office Building, the MDAC parking lots to the east and west of MDAC Office Building or the drive connecting these two lots. All work shall be similar to that defined and scheduled in Sections 3, 4, and 5 including Appendix A and B of the *Old Capitol Green Landscape Management Plan* (Appendix E) with the following modifications:

1. Weed Removal, utilizing physical removal and/or post-emergent herbicides as required, at all sidewalks, hardscape and paved areas shall be included.
2. Blowing off promptly of grass clippings and any other debris generated by lawn or landscape maintenance activities shall be included.
3. Contractor shall obtain soil testing of grounds to verify recommended fertilization types and amounts required prior to first application per schedule.
4. Lawn Irrigation work as defined in 5.1.1 is excluded.
5. In order to maintain the recommended heights as defined in Section 5.1.1 Lawn Cultural Practices and referenced in Table 5-1 in Appendix E, Contractor shall perform mowing during growing period on a regular basis not more frequently than every seven (7) days nor less frequently than every ten (10) days. For the purpose of this contract, growing season shall be considered the period between the first week of March and the first week of November. Mowing is required during non-growing periods, however; frequency during non-growing periods may be reduced to that required to provide a consistent appearance.
6. Removal of leaves, twigs, branches and other landscape debris shall be included. All such debris shall be blown or otherwise removed from paved surfaces and parking lots in work area on a regular basis, at least as frequently as mowing occurs. All debris shall be removed from planting beds and adjacent buildings. Leaves and twigs at lawns may be mulched at time of mowing and remain on site provided quantity/build up is not excessive. Larger sticks and branches shall be bagged and/or otherwise removed from site.

## Appendix F – Draft Contract

### D. Central High School Grounds

This area shall include maintenance of all grounds to edge of curb of adjacent City of Jackson streets, including landscaped and hardscaped areas as well as associated parking areas and drives on property operated and maintained by DFA, Office of Capitol Facilities in Jackson, Mississippi that is bound by North Lamar Street to the west, East Griffith Street to the north, North West Street to the east, and by private property to the south. All work shall be similar to that defined and scheduled in Sections 3, 4, and 5 including Appendix A and B of the *Old Capitol Green Landscape Management Plan* (Appendix E) with the following modifications:

1. Weed Removal, utilizing physical removal and/or post-emergent herbicides as required, at all sidewalks, hardscape and paved areas shall be included.
2. Blowing off promptly of grass clippings and any other debris generated by lawn or landscape maintenance activities shall be included.
3. Contractor shall obtain soil testing of grounds to verify recommended fertilization types and amounts required prior to first application per schedule.
4. Lawn Irrigation work as defined in 5.1.1 is therefore excluded.
5. In order to maintain the recommended heights as defined in Section 5.1.1 Lawn Cultural Practices and referenced in Table 5-1 in Appendix E, Contractor shall perform mowing during growing period on a regular basis not more frequently than every seven (7) days nor less frequently than every ten (10) days. For the purpose of this contract, growing season shall be considered the period between the first week of March and the first week of November. Mowing is required during non-growing periods, however; frequency during non-growing periods may be reduced to that required to provide a consistent appearance.
6. Removal of leaves, twigs, branches and other landscape debris shall be included. All such debris shall be blown or otherwise removed from paved surfaces and parking lots in work area on a regular basis, at least as frequently as mowing occurs. All debris shall be removed from planting beds and adjacent buildings. Leaves and twigs at lawns may be mulched at time of mowing and remain on site provided quantity/build up is not excessive. Larger sticks and branches shall be bagged and/or otherwise removed from site.

### E. The Joseph Proprieties

This area shall include maintenance of all grounds to edge of curb of adjacent City of Jackson streets, including landscaped and hardscaped areas as well as associated parking areas and drives on property operated and maintained by DFA, Office of Capitol Facilities in Jackson, Mississippi that lies at 620 North Street, Jackson, Mississippi; 660 North Street, Jackson, Mississippi; and 700 North State Street, Jackson, Mississippi. All work shall be similar to that defined and scheduled in Sections 3, 4, and 5 including Appendix A and B of the *Old Capitol Green Landscape Management Plan* (Appendix E) with the following modifications:

1. Weed Removal, utilizing physical removal and/or post-emergent herbicides as required, at all sidewalks, hardscape and paved areas shall be included.

## Appendix F – Draft Contract

2. Blowing off promptly of grass clippings and any other debris generated by lawn or landscape maintenance activities shall be included.
3. Contractor shall obtain soil testing of grounds to verify recommended fertilization types and amounts required prior to first application per schedule.
4. In order to maintain the recommended heights as defined in Section 5.1.1 Lawn Cultural Practices and referenced in Table 5-1 in Appendix E, Contractor shall perform mowing during growing period on a regular basis not more frequently than every seven (7) days nor less frequently than every ten (10) days. For the purpose of this contract, growing season shall be considered the period between the first week of March and the first week of November. Mowing is required during non-growing periods, however; frequency during non-growing periods may be reduced to that required to provide a consistent appearance.
5. Removal of leaves, twigs, branches and other landscape debris shall be included. All such debris shall be blown or otherwise removed from paved surfaces and parking lots in work area on a regular basis, at least as frequently as mowing occurs. All debris shall be removed from planting beds and adjacent buildings. Leaves and twigs at lawns may be mulched at time of mowing and remain on site provided quantity/build up is not excessive. Larger sticks and branches shall be bagged and/or otherwise removed from site.

### **F. Service Hours**

Regular working hours shall be Monday thru Friday from 7:00 a.m. through 5:00 p.m. excluding State Holidays. Work may also be restricted at times due to events scheduled for the grounds. The Office of Capitol Facilities will provide advance notice of such events no less than 30 days in advance of each event.

## **2. Contract Term**

- A. The effective date of this Contract will be March 1, 2021. This Contract's term will be for four (4) years with one (1) optional one-year renewal to be exercised discretion of DFA. By August 1 of each subsequent year of the contract, DFA will notify the Contractor, in writing, of DFA's intent as to renewal of the Contract.
- B. This Contract may be terminated by either party, with or without cause, upon at least ninety (90) days prior written notice of intent to terminate.
- C. All records and information provided by DFA to the Contractor are the sole property of the DFA and shall be returned to the DFA within thirty (30) days of the termination date of this Contract.
- D. Upon termination of this Contract, the Contractor shall cooperate with the DFA and the new Contractor during the transition of the DFA's business to the new Contractor. Upon request from the DFA, the Contractor shall provide all DFA information maintained by the Contractor in a time frame specified by the DFA.



## Appendix F – Draft Contract

### 3. **Consideration**

The DFA agrees to compensate the Contractor for services approved by the DFA and performed by the Contractor under the terms of this Contract as follows:

- A. The fees listed in **Exhibit A – Pricing** shall constitute the entire compensation due to the Contractor for services and all of the Contractor's obligations hereunder regardless of the difficulty, materials, or equipment required. The fees include, but are not limited to, all applicable taxes, fees, general office expense, travel, overhead, profit, and all other direct and indirect costs, incurred or to be incurred, by the Contractor. The DFA shall not provide any prepayments or initial deposits in advance of services being rendered. Payment for any and all services provided by the Contractor to the DFA shall be made only after said services have been duly performed and properly invoiced. The fees listed in **Exhibit A – Pricing** of this contract are firm for the duration of this contract and are not subject to escalation for any reason, unless this Contract is duly amended.
- B. The Contractor must submit all invoices, in a form acceptable to the DFA (provided that such acceptance will not be unreasonably withheld) with all the necessary supporting documentation, prior to any payment to the Contractor. No additional compensation will be provided by the DFA for any expense, cost, or fee not specifically authorized by this Contract, or by written authorization from the DFA.
- C. The payment of an invoice by the DFA shall not prejudice the DFA's right to object or question any invoice or matter in relation thereto. Such payment by the DFA shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. The Contractor's invoice or payment may be subject to further reduction for amounts included in any invoice or payment theretofore made which are determined by the DFA, on the basis of audits, not to constitute allowable costs.

### 4. **Availability of Funds**

*It is expressly understood and agreed that the obligation of the DFA to proceed under this Contract is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the Contract are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the DFA, the DFA shall have the right upon ten (10) working days written notice to Contractor, to terminate this Contract without damage, penalty, cost or expenses to the DFA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.*

### 5. **E-Payment**

*Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public*

## Appendix F – Draft Contract

*Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq.*

### 6. **Paymode**

*Payments by state agencies using the State’s accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor’s choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Contract. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.*

### 7. **Recovery of Money**

Whenever, under the Contract, any sum of money shall be recoverable from or payable by the Contractor to the DFA, the same amount may be deducted from any sum due to the Contractor under the Contract or under any other Contract between the Contractor and the DFA. The rights of the DFA are in addition and without prejudice to any other right the DFA may have to claim the amount of any loss or damage suffered by the DFA on account of the acts or omissions of the Contractor.

### 8. **Applicable Law**

*The Contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.*

### 9. **Compliance with Laws**

*Contractor understands that DFA is an equal opportunity employer and, therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful and Contractor agrees during the term of this Contract that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this Contract shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.*

### 10. **Force Majeure**

The Contractor and DFA shall be excused from performance under this contract for any period that they are prevented from performing any services under this contract as a result of an act of God, war, civil disturbance, epidemic, court order, government act or omission, or other cause beyond their reasonable control. When such a cause arises, the Contractor shall notify DFA immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically

## Appendix F – Draft Contract

extend such dates for a period equal to the duration of the delay caused by such events, unless DFA determines it to be in its best interest to terminate the Contract.

### **11. Site Rules and Regulations**

The Contractor shall use its best efforts to ensure that its employees and agents, while on DFA premises, shall comply with site rules and regulations.

### **12. Anti-Assignment**

Contractor acknowledges that it was selected by the DFA to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. The Contractor shall not assign, or otherwise transfer in whole or in part, its right or obligations under this Contract without prior written consent of the DFA, which DFA may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer without said consent shall be null and void. Subject to the foregoing, this Contract shall be binding upon the respective successors and assigns of the parties.

### **13. Subcontracting**

The Contractor shall not subcontract obligations under this Contract without prior written consent of the DFA, which DFA may, in its sole discretion, approve or deny without reason. No such approval by DFA of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of DFA in addition to the total fixed price agreed upon in this Contract. Subcontracts shall be subject to the terms and conditions of this Contract and to any conditions of approval that the State may deem necessary. The Contractor is solely responsible for the performance of any subcontractor. The Contractor shall give DFA immediate written notice by certified mail, facsimile, or any other carrier that requires signature upon receipt of any action or suit filed and prompt notice of any claim made against the Contractor or subcontractor which in the opinion of the Contractor may result in litigation related in any way to the contract with DFA.

### **14. Small and Minority Businesses**

DFA encourages the employment of small business and minority business enterprises. Therefore, the Contractor shall report, separately, the involvement in this contract of small businesses and businesses owned by minorities and women. Such information shall be reported on an invoice annually on the contract anniversary and shall specify the actual dollars contracted to-date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted for with such businesses on this contract.

### **15. Confidentiality**

Notwithstanding any provision to the contrary contained herein, it is recognized that Agency is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 et seq. If a public records request is made for any information provided to Agency pursuant to the contract and designated by the Contractor in writing as trade secrets or other proprietary confidential information, DFA shall follow the provisions of Mississippi Code Annotated §§ 25-61-9



## Appendix F – Draft Contract

and 79-23-1 before disclosing such information. The Agency shall not be liable to the Contractor for disclosure of information required by court order or required by law.

### 16. **Disclosure of Confidential Information**

In the event that either party to this Contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party (unless prohibited by law or governmental authority from providing such notice) and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this Contract. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

Any liability resulting from the wrongful disclosure of confidential information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor without the express written approval of the Agency shall result in the immediate termination of this contract.

### 17. **Transparency**

*This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this Contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Contract is required to be posted to the Mississippi Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential Contractor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.*

### 18. **Contractor Personnel**

The DFA shall, throughout the life of the Contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by the Contractor. If the DFA reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to the DFA in a timely manner and at no additional cost to the DFA. The day-to-day supervision and control of the Contractor’s employees and subcontractors is the sole responsibility of the Contractor.

### 19. **Employment of DFA Employees**

The Contractor shall not knowingly engage on a full-time, part-time, or other basis during the period of the contract, any professional or technical personnel who are or have been at any time during the period of the contract in the employ of DFA, without the written consent of DFA. Further, the Contractor shall not knowingly engage in this project, on a full-time, part-time, or other basis during the period of the contract, any former employee

## Appendix F – Draft Contract

of DFA who has not been separated from DFA for at least one year, without the written consent of DFA. The Contractor shall give priority consideration to hiring interested and qualified adversely affected State employees at such times as requested by DFA to the extent permitted by this contract or State law.

### 20. **Independent Contractor**

The Contractor shall, at all times, be regarded as and shall be legally considered an Independent Contractor and shall at no time act as an agent for the DFA. Nothing contained herein shall be deemed or construed by DFA, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between DFA and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of DFA or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of DFA and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of DFA. No act performed or representation made, whether oral or written, by the Contractor with respect to third parties shall be binding on the DFA. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the DFA; and the DFA shall at no time be legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. DFA shall not withhold from the Contractor payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, DFA shall not provide to Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by DFA for its employees.

### 21. ***E-Verification***

*If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this Contract may subject Contractor to the following: (i) termination of this Contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public; (ii) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,*

## Appendix F – Draft Contract

*(iii) both. In the event of such cancellations/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.*

### **22. Authority to Contract**

Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this Contract; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this Contract is not restricted or prohibited by any loan, security, financing, contractual, or other contract of any kind; and, (d) notwithstanding any other provision of this Contract to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Contract.

### **23. License Requirements**

The Contractor shall have, or obtain, any license/permits that are required prior to and during the performance of work under this contract.

### **24. Debarment and Suspension**

The Contractor certifies to the best of its knowledge and belief, that it: (i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any Federal department or agency or any political subdivision or agency of the State of Mississippi; (ii) Has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; (iii) Has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iv) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of these offenses enumerated in paragraphs two (2) and three (3) of this certification; and, (v) Has not, within a three-year period preceding this proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.

### **25. Modification or Renegotiation**

This Contract may be modified only by written Contract signed by the parties hereto. The parties agree to renegotiate the Contract if federal, state and/or the DFA revisions of any applicable laws or regulations make changes in this Contract necessary.

### **26. Procurement Regulations**

*This Contract shall be governed by the applicable provisions of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at at*

## Appendix F – Draft Contract

<http://www.dfa.ms.gov/media/9413/pprb-opscr-rules-and-regulations-eficetive-01182020.pdf>.

**27. Representation Regarding Contingent Fees**

*Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.*

**28. Representation Regarding Gratuities**

*The Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.*

**29. Termination upon Bankruptcy**

*This Contract may be terminated in whole or in part by DFA upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total Contract price.*

**30. Termination for Convenience**

A. Termination. *The Agency Head or designee may, when the interests of the State so require, terminate this Contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the Contract terminated and when termination becomes effective.*

B. Contractor's Obligations. *Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination, Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.*

**31. Termination for Default**

A. Default. *If Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract or any extension thereof, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or*



## Appendix F – Draft Contract

*designee, such officer may terminate Contractor's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.*

- B. Contractor's Duties. Notwithstanding termination of the Contract and subject to any directions from the Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.*
- C. Compensation. Payment for completed services delivered and accepted by the State shall be at the Contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.*
- D. Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the Contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled "Termination for Convenience. (As used in this paragraph of this clause, the term "subcontractor" means a subcontractor at any tier).*
- E. Erroneous Termination for Default. If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (D) (Excuse for Nonperformance or*



## Appendix F – Draft Contract

*Delayed Performance) of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience.*

- F. *Additional Rights and Remedies.* *The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.*

### 32. **Stop Work Order**

- A. *Order to stop work.* *The Chief Procurement Officer, may by written order to the Contractor at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this Contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either (i) cancel the stop work order; or (ii) terminate the work covered by such order as provided in the "Termination for Default" clause or the "Termination for Convenience" clause of this Contract.*
- B. *Cancellation or Expiration of the Order.* *If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the Contract shall be modified in writing accordingly, if: (i) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and, (ii) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.*
- C. *Termination of Stopped Work.* *If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.*
- D. *Adjustment of Price.* *Any adjustment in Contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this Contract.*

### 33. **Price Adjustment**

- A. *Price Adjustment Methods.* *Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:*
- a. *by agreement on a fixed price adjustment before commencement of the additional performance;*

## Appendix F – Draft Contract

- b. by unit prices specified in the contract;
- c. by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
- d. by a price escalation clause.

B. Submission of Cost or Pricing Data. The contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.

### 34. **Oral Statements**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract. All modifications to the Contract must be made in writing by the DFA and agreed to by the Contractor.

### 35. **Ownership of Documents and Work Papers**

The DFA shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Contract which is the subject of this Contract, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to the DFA upon termination or completion of the Contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. The Contractor shall be entitled to use such work papers only after receiving written permission from DFA and subject to any copyright protections. If the material is qualified for copyright, the Contractor may copyright such material, with approval of DFA, but DFA shall reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so.

### 36. ***Trade Secrets, Commercial and Financial Information***

*It is expressly understood that Mississippi law requires that the provisions of this Contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.*

### 37. **Third-Party Action Notification**

The Contractor shall give the DFA prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any entity that may result in litigation related in any way to this Contract.

### 38. ***Indemnification***

*To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its Commissioners, Board Members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its*

## Appendix F – Draft Contract

*partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this contract. In the State's sole discretion upon approval of the Mississippi Attorney General, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the Office of the Mississippi Attorney General. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General, which shall not be unreasonably withheld.*

**39. Approval**

*It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.*

**40. Change in Scope of Work**

The DFA may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by Contractor that the scope of the project or of Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by the DFA and the Contractor. If the Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the DFA in writing of this belief. If the DFA believes that the particular work is within the scope of the Contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the Contract.

**41. Disputes**

Any dispute concerning the contract which is not disposed of by agreement shall be decided by the Executive Director of DFA who shall reduce such decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Executive Director shall be final and conclusive. Nothing in this paragraph shall be construed to relieve the Contractor of full and diligent performance of the contract.

**42. Cost of Litigation**

In the event that DFA deems it necessary to take legal action to enforce any provision of the contract, the Contractor shall bear the cost of such litigation, as assessed by the court, in which DFA prevails. Neither the State of Mississippi nor DFA shall bear any of the Contractor's cost of litigation for any legal actions initiated by the Contractor against DFA regarding the provisions of the contract. Legal action shall include administrative proceedings.

**43. Attorney Fees**

The Contractor agrees to pay reasonable attorney fees incurred by the State and DFA in enforcing this contract or otherwise

**44. Failure to Enforce**

Failure by the DFA at any time to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the DFA to enforce any provision at any time in accordance with its terms.

**45. Actual Damages and Liquidated Damages**

The DFA reserves the right to assess actual or liquidated damages, upon Contractor's failure to provide services in accordance with the requirements of the contract. The DFA may assess liquidated damages against the Contractor pursuant to this section, and deduct the amount of damages from the Contractor's contingency payment. Any damages applied prior to recovery of money under this contract shall be applied against the first contingency payment. The DFA, at its sole discretion, may establish an installment deduction plan for the amount of any damages. The determination of the amount of damages shall be at the sole discretion of the DFA, within the ranges set forth below. Self-reporting by the Contractor shall be taken into consideration in determining the amount of damages to be assessed. Unless specified otherwise, the DFA shall give written notice to the Contractor of the failure that might result in the assessment of damages and the proposed amount of the damages. The Contractor shall have fifteen (15) calendar days from the date of the notice in which to dispute the DFA's determination. The DFA may, at its sole discretion, assess damages between one dollar and zero cents (\$1.00) and five thousand dollars and zero cents (\$5,000.00) for each failure that occurs and/or remains uncorrected.

Assessment of any actual or liquidated damages does not waive any other remedies available to the DFA pursuant to this Contract or state or federal law. If liquidated damages are known to be insufficient then the DFA has the right to pursue actual damages.

**46. Standards of Care/Remedies**

The Contractor shall exercise reasonable care and due diligence consistent with standards in the industry in the performance of its obligations under this Contract. Each party shall have available to it all remedies available at law or equity.

**47. Record Retention and Access to Records**

The DFA reserves the right to audit all records maintained by the Contractor and/or its affiliates relative to the Contractor's performance under this Contract. At least forty-eight (48) hours' notice by the DFA will be given to the Contractor of the intent to audit. The DFA shall have the right to perform financial, performance, and other special audits on such records maintained by the Contractor during regular business hours throughout the Contract period. Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the Contractor agrees that the DFA or any of its duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All financial records related to this Contract shall be kept by the Contractor for a minimum period of three (3) years after final payment

## Appendix F – Draft Contract

under this Contract and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later. It is understood and agreed that all claims-related records shall be maintained electronically until such time as the DFA and Contractor agree that they are no longer needed.

### **48. Right to Audit**

Contractor shall maintain such financial records and other records as may be prescribed by DFA or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by DFA, whichever event occurs first. These records shall be made available for inspection during regular business hours and with reasonable advance notice during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

### **49. Right to Inspect**

DFA, the Mississippi Department of Audit, DHHS, CMS, OIG, the General Accounting Office (GAO), or any other auditing agency prior-approved by DFA, or their authorized representative shall, at all reasonable times, have the right to enter onto the Contractor's premises, or such other places where duties under this contract are being performed, to inspect, monitor, or otherwise evaluate (including periodic systems testing) the work being performed. The Contractor shall provide access to all facilities and assistance for DFA and Mississippi Audit Department representatives. All inspections and evaluations shall be performed in such a manner as to not delay work. Refusal by the Contractor to allow access to all documents, papers, letters or other materials, shall constitute a breach of contract. All audits performed by persons other than DFA staff shall be coordinated through DFA and its staff.

### **50. Severability**

If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the Contract as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

### **51. Licenses**

The Contractor shall ensure that the following professional licenses are maintained and current during the term of the contract, Applicable licenses, but not necessarily limited to, are: (1) Horticultural Pest Control License; (2) Horticultural Weed Control; (3) Landscape Horticulturist, and (4) Tree Surgery. The Contractor may utilize the license of an approved sub-contractor to fulfill this requirement. The Contractor shall, upon the expiration of a license, furnish to DFA a current license.



## Appendix F – Draft Contract

### 52. Insurance

The Contractor shall maintain, at its own expense, comprehensive general liability coverage in an amount no less than five hundred thousand dollars (\$500,000). The Contractor shall also maintain Motor Vehicle Liability coverage in an amount no less than five hundred thousand dollars (\$500,000). Additionally, the Contractor shall maintain Motor Vehicle Property Damage coverage in an amount no less than two hundred fifty thousand dollars (\$250,000). The Contractor shall maintain, during the life of this contract, workers' compensation insurance. Such insurance shall fully comply with the Mississippi Workers' Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Workers' Compensation Statute, the Contractor shall provide adequate insurance satisfactory for protection of his or her employees not otherwise protected. All policies shall be issued by an insurance company licensed by the Mississippi Department of Insurance with the State of Mississippi listed as an additional insured. On an annual basis, the Contractor shall furnish to DFA certificates evidencing such insurance is in effect on the first working day following the contract signing.

### 53. Notices

All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by certified United States mail postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth in this section. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

If to DFA:

Attention: Saranne Smith  
Department of Finance and Administration  
Office of Procurement and Contracts  
501 North West Street  
Suite 1301-A Woolfolk Building  
Jackson, Mississippi 39205-0267

If to the Contractor:

Attention:

### 54. Incorporation of Documents

This Contract consists of and precedence is hereby established by the order of the following documents incorporated herein:

- A. This Contract signed by the parties including Exhibit A, **Pricing**; and
- B. The Contractor's response to the Department of Finance and Administration's Invitation for Bids for Lawn and Landscaping Services dated December 1, 2020 and attached hereto as Exhibit B and incorporated fully herein by reference;
- C. The Department of Finance and Administration's Invitation for Bids for Lawn and Landscaping Maintenance Services dated October 23, 2020, attached hereto as Exhibit C and incorporated fully herein by reference; and

## Appendix F – Draft Contract

This Contract, including the Exhibits referenced herein, constitutes the entire Contract of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and Contracts, written or oral, between the parties relating thereto. Any ambiguities, conflicts, or questions of interpretation of this Contract shall be resolved by first reference to this Contract including Exhibit A, and if still unresolved, by reference to Exhibit B, and if still unresolved, by reference to Exhibit C. Omission of any term or obligation from this Contract or the attached Exhibits shall not be deemed an omission from this Contract if such term or obligation is provided for elsewhere.

**Witness our signatures, on the date first written.**

Contractor

Department of Finance and Administration

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**PRICING**

<b>PRICING</b>					
The listed pricing shall include the provision of services at the Museum District (grounds adjacent to the Mississippi Museums, William F. Winter Building, the Winter Central Mechanical Plant), the Old Capitol Green area (the War Memorial Building, the Old Capitol, and the Charlotte Capers Office Building), the GM&O Depot/Naval Reserve Record Center (including the Jefferson Street Parking Lot), the Central High School Grounds, and, the Joseph Properties on a scheduled basis.					
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5*</b>
<b>Annual Cost</b>	\$	\$	\$	\$	\$

**EXHIBIT B**

**THE CONTRACTOR’S RESPONSE TO THE DEPARTMENT OF FINANCE AND  
ADMINISTRATION’S INVITATION FOR BIDS FOR LAWN AND LANDSCAPING  
SERVICES DATED DECEMBER 1, 2020.**

**EXHIBIT C**

**THE DEPARTMENT OF FINANCE AND ADMINISTRATION'S INVITATION FOR  
BIDS FOR LAWN AND LANDSCAPING SERVICES DATED  
OCTOBER 23, 2020**