

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

AMENDMENT NO. 1 TO INDEPENDENT CONTRACTOR AGREEMENT

THIS AMENDMENT is entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and ParkWest Staffing, Incorporated, (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

THAT, WHEREAS, the parties have executed and accepted that certain Independent Contractor Agreement for staffing services, (hereinafter the "Agreement"), attached hereto as Exhibit "A" and incorporated by reference; and

WHEREAS, the following changes are incorporated as if a part of the Agreement:

- 1. Section 2, Paragraph 4 shall be amended to read as follows:

"The Maximum Compensation for the performance of Services described herein is one million forty-two thousand and eight hundred dollars and no/100 (\$1,042,800). In no case shall the amount paid under this Agreement exceed the Maximum Compensation; provided however that if Contractor requires additional services and/or manpower not contemplated at the time of this Agreement, Contractor reserves the right to request additional compensation or terminate this Agreement upon thirty (30) days written notice."

- 2. Section 4 shall be amended to read as follows:

Term of this Agreement. This Agreement shall terminate on December 7, 2015. This Agreement may be terminated sooner by either party for any reason upon sixty (60) days advance written notice to the other party. This Agreement may also be terminated at any time:

- a. By either party upon breach by the other party of a material provision of this Agreement, or:
- b. By either party upon the insolvency of the other party, or upon the filing of a voluntary petition in bankruptcy by the other party or to have the other party declared bankrupt, or upon the appointment of a receiver or trustee for the other party, or upon the execution by the other party of an assignment for the benefit of creditors."

Except as provided herein, all terms and conditions of the Agreement shall remain unchanged.

FORT BEND COUNTY

Robert E. Hebert

Robert E. Hebert, County Judge

10-23-2012

Date

ATTEST:

Dianne Wilson

Dianne Wilson, County Clerk

PARKWEST STAFFING, INCORPORATED

Diana Cross

Authorized Agent- Signature

Diana Cross

Authorized Agent- Printed Name

General Manager

Title

10-4-12

Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$1,042,800.00 to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Edward Sturdivant

Robert Edward Sturdivant, County Auditor

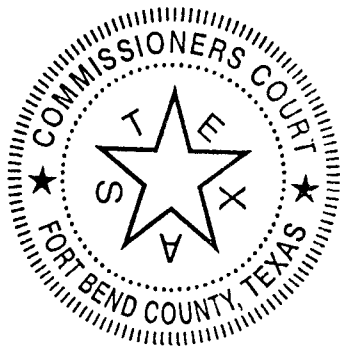


EXHIBIT A

INDEPENDENT CONTRACTOR AGREEMENT

This is an Independent Contractor Agreement ("Agreement") made as of December ____, 2010 between **ParkWest Staffing, Incorporated**, which has offices at 1011 Highway 6 South, #303, Houston, Texas 77077 (called "Contractor" in this Agreement), and **Fort Bend County** which has offices at 12550 Emily Court, #400 Sugar Land, Texas 77478 (called "Company" in this Agreement).

1. **Statement of Work.** Contractor will perform staffing services for the Company by supplying the Company with all temporary or contract personnel for the position of Ambassador in compliance with all state and federal laws and/or guidelines.

The parties will work together to effectively implement this program and to define additional responsibilities and duties as may be appropriate.

The Company agrees that throughout the term of this Agreement, it will submit all of its requirements for temporary or contract personnel for the Services described herein to the Contractor to be handled under the terms of this Agreement, unless otherwise mutually agreed to in writing.

2. **Billing, Payment, and Time Cards.** The Company agrees to pay Contractor the agreed-to bill rates (see Attachment A) for the time worked by the Contractor's personnel. A record of time worked will be maintained on a time card unless the parties mutually agree to an alternative process. The Contractor will send the Company a bill each week for time worked. Payment for these invoices is due within thirty (30) days from receipt. Undisputed invoices not paid within forty five (45) days of receipt by the Company are subject to an interest charge at the rate of 1% per month (12% per annum) or, if less, at the highest rate permitted under applicable law.

For each person assigned to the Company, the bill rate will be the amount which the parties mutually establish for such person.

Bill rates will be in accordance with the bill rate schedule attached hereto as Attachment A.

The Maximum Compensation for the performance of Services described herein is Three Hundred Sixty-Four Thousand Eight Hundred Seven and No/100 (\$364,807.00) Dollars. In no case shall the amount paid under this Agreement exceed the Maximum Compensation; provided however that if Company requires additional services and/or manpower not contemplated at the time of this Agreement, Contractor reserves the right to request additional compensation or terminate this Agreement upon thirty (30) days' written notice.

3. **Obligations upon Cancellation of Assignment.** Even though each person has been approved through prescreening guidelines, it is possible that a person will not meet the Company's expectations. The Company may cancel any person's assignment at any time for any lawful reason by notifying Contractor. If the Company does so during the first eight (8) hours of a person's assignment because the Company is dissatisfied, the Company will not have to pay Contractor for the time spent by the person and the Contractor will immediately seek to supply the Company with a replacement. However, if the Company keeps a person on assignment for more than eight (8) hours or a person's assignment is completed in less than eight (8) hours, it is agreed that the person's performance will be considered satisfactory and the Company will pay the bill for all hours worked by such person through the termination of the person's assignment. Of course, termination is not the Company's only option. If at any time the Company becomes dissatisfied with the performance or conduct of any person for any lawful reason but indicates that it would like to retain the person on assignment, Contractor will seek to remedy the Company's concern through appropriate disciplinary or other measures.

4. **Term of This Agreement.** This Agreement may be terminated by either party for any reason upon sixty (60) days' advance written notice to the other party. This Agreement may also be terminated at any time:

- a. By either party upon breach by the other party of a material provision of this Agreement, or;
- b. By either party upon the insolvency of the other party, or upon the filing of a voluntary petition in bankruptcy by the other party or to have the other party declared a bankrupt, or upon the appointment of a receiver or trustee for the other party, or upon the execution by the other party of an assignment for the benefit of creditors.

5. **Independent Contractor.** The Contractor, as well as its employees, agents and representatives, shall perform services under this Agreement as an independent contractor, using its own means and methods, and shall not act, or hold itself out as an agent, employee, or legal representative of the Company. As an independent contractor, Contractor agrees to accept exclusive liability for the payment of taxes or contributions for unemployment insurance or old age pensions or annuities or social security payments which are measured by the payments, or other remuneration paid hereunder to the Contractor. Contractor further agrees to accept exclusive liability for the payment to its employees, agents or representatives, of overtime, scale wages or any other payments required by federal, state or local statute, rule or regulation.

6. **Solicitation of Personnel.** During the term of each person's assignment and for ninety (90) days following the termination of their assignment, if the Company directly hires any of Contractor's employees then the Company agrees to pay Contractor a fee of 15% of the candidate's annualized wages. If the Company, for any reason, cancels Contractor's Contract and selects another staffing or similar outsourcing vendor to supply similar or like services and the new vendor wants to hire employees already working at the facility through Contractor, Company agrees to pay the hourly wages of said temporary employees to Contractor (ParkWest) for a period of 90 days before the temporary employee is allowed to work for Company's new vendor. Provided that the Company has complied with the notice provision contained in Paragraph 4 of this Agreement, at the end of the 90 days Contractor's employee (s) is allowed to transfer to Company's payroll or Company's new staffing vendor's payroll free at no charge. If The Company has not complied with Paragraph 4 the computation of the 90 days before which time the employee may be transferred to another payroll begins on the day that Contractor received notice of termination of this Agreement.

This Section 9 shall survive termination of this Agreement.

7. **Insurance and Liability.** During the term of this Agreement, Contractor will maintain, at a minimum, the following insurance coverages:

<u>Type</u>	<u>Coverage Limits</u>
a. Worker's Compensation in the State where our personnel will be assigned.	Statutory
b. Employer's Liability	\$1,000,000 per injury
c. Commercial General Liability including: Bodily Injury and Property Damage	\$2,000,000 General Aggregate \$1,000,000 Each Occurrence
d. Excess Liability	\$5,000,000 each occurrence

The Company and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies written on behalf of the Contractor shall contain a waiver of subrogation in favor of the Company and members of Commissioners Court.

If required coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Contract is completed.

8. **Equal Employment Opportunity and Fair Labor Standards.** It is the policy of the parties to not discriminate with regard to employment, training, compensation, promotion, and other conditions of employment due to race, color, religion, national origin, sex, marital or veteran status, age, the presence of a non-job related disability, or the existence of any other legally protected status.

It is the policy of Contractor to comply with the Fair Labor Standards Act in the classification of all employees as exempt or non-exempt from overtime wages. The Company agrees that it will abide by such classifications and pay overtime wages as may be required and approved for non-exempt employees provided by Contractor. The Company will not direct Contractor to violate the FLSA by either classification of employees or deductions from wages.

9. **Licenses, Permits and Compliance with Law.** Contractor shall obtain and maintain during the term of this Agreement any and all licenses, permits and/or certifications required by city, county, state and federal law and regulation necessary for the performance of the services to be provided under this Agreement, and Contractor and Company shall comply with all applicable law in any manner affecting the services to be performed hereunder.

10. **Indemnification.** Contractor will defend, indemnify and hold harmless Company, its governors, officers, directors, employees and agents ("the Idemnitees") from any and all claims, damages, losses, litigation, expenses, counsel fees and other costs that may be asserted or claimed against Company that arise from, or are attributable to, any act or omission of Contractor, its directors, agents, employees or officers in connection with the services to be provided by this Contract.

Company shall have the right to select counsel of its choosing to defend it and, such selection shall not lessen or otherwise limit Contractor's obligations pursuant to this paragraph.

11. **Applicable Law.** The rights and obligations of the parties hereunder shall be construed and enforced exclusively in accordance with, and governed by, the laws of the State of Texas without regard to principles of conflict of laws. Exclusive venue of any dispute relating to this Agreement shall be in Fort Bend County, Texas.

12. **Severability.** If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or applications and, to this end the provisions of this Agreement are declared to be severable.

13. **Excusable Delays.** Contractor will not be liable for any damages resulting from delays in performance or failure to perform due to acts of God, strikes, terrorism, and governmental actions.

14. **Waiver.** The failure of either party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof.

15. **Successors and Assigns.** This Agreement, and all rights and powers granted hereby, will bind and inure to the benefit of the parties hereto and their respective successors and assigns. No party hereto may assign its rights or obligations hereunder without the prior written consent of the other party, which consent will not be unreasonably withheld.

16. **Validity of Terms.** If any term or provision of this Agreement shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions of this Agreement shall not be affected thereby.

17. **Notice.** All notices and other communications pursuant to this Agreement shall be in writing and shall be deemed to have been duly given to the other party (a) on the day it is personally delivered or transmitted by facsimile; (b) on the day after being sent by Federal Express (or comparable overnight delivery service), all fees prepaid; or (c) on the second day after being mailed by United States certified or registered mail, postage prepaid. If notice is sent via overnight delivery service or U.S. mail, it shall be sent to the other party at the address set forth on the first page of this Agreement (or at such other address as shall be given in writing by either party to the other).

Notices to the Company shall be effective only when addressed to:

Diana Cross
ParkWest Staffing, Inc.
1011 Highway 6 South, Suite 303
Houston, Texas 77077

with a copy to:

Crain, Caton & James
A Professional Corporation
1401 McKinney Street, Suite 1700
Houston, Texas 77010

Attn: Kimberly Stuart

Notice to the Contractor shall be effective only when addressed to:

Fort Bend County Transportation
12550 Emily Cove, Suite 400
Sugar Land, Texas 77478

18. **Dispute Resolution:** Either Party may initiate dispute resolution procedures by sending a notice of dispute ("Notice of Dispute"). The Parties will attempt to resolve the dispute promptly through good faith negotiations including 1) timely escalation of the dispute to executives who have authority to settle the dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives. If the dispute has not been resolved within ten (10) days from the Notice of Dispute, the Parties will proceed to mediation. During this time, both parties will continue to perform their respective obligations under the Contract. The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the dispute. If a dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the dispute to a court of competent jurisdiction as identified in Section 11 above.

19. **Confidential and Proprietary Information.** The Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to the Company. Any and all information of any form obtained by the Contractor or its employees or agents in the performance of this Agreement shall be deemed to be confidential information of the Company ("Confidential Information"). Any

reports or other documents or items (including software) that result from the use of the Confidential Information by the Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by the Contractor) publicly known or is contained in a publicly available document; (b) is furnished by the Company to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in the Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (d) is independently developed by employees or agents of the Contractor who can be shown to have had no access to the Confidential Information.

The Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that the Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to the Company hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. The Contractor shall use its best efforts to assist the Company in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, the Contractor shall advise the Company immediately in the event the Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and the Contractor will at its expense cooperate with the Company in seeking injunctive or other equitable relief in the name of the Company or the Contractor against any such person. The Contractor agrees that, except as directed by the Company, the Contractor will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Contract or at the Company's request, the Contractor will turn over to the Company all documents, papers, and other matter in the Contractor's possession which embody Confidential Information.

The Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to the Company that is inadequately compensable in damages. Accordingly, the Company may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. The Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of the Company and are reasonable in scope and content.

The Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

20. **Entire Agreement.** This instrument constitutes and contains the entire Agreement and final understanding between the parties covering the services provided by the Contractor. The parties intend it as a complete and exclusive statement of the terms of their agreement. It supersedes all prior negotiations and agreements, proposed or otherwise, whether written or oral, between the parties concerning services provided by the Contractor. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either party. This is a fully integrated document. No person has any authority to make any representation or promise on behalf of any of the parties not set forth herein and this Agreement has not been executed in reliance upon any representations or promises except those contained herein.

21. **Writing Required to Modify.** This Agreement may be modified or amended only with a written instrument duly executed by each of the parties. Due execution by either Party shall not include e-mail communication. The performance by either Party of any modification to this Agreement that was not in writing shall not act as a waiver of the Party's right to rely on this provision.

22. **Energy Conservation Requirements.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

23. **Clean Water Requirements.** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Company and understands and agrees that the Company will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

24. **Access to Records and Reports.** The Contractor agrees to provide the Company, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the Company, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

25. **Federal Changes.** The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Company and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

26. **Clean Air.** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to Company and understands and agrees that the Company will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

27. **No Government Obligation to Third Parties.** The Company and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Company, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

28. **Program Fraud and False or Fraudulent Statement and Related Acts.** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49

C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

29. Civil Rights Requirements. The following requirements apply to the underlying contract:

Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

30. **Disadvantaged Business Enterprise (DBE)**. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal has not been established for this procurement.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Company deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The Contractor is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the Company. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Contract is satisfactorily completed.

The Contractor must promptly notify the Company whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without the prior written consent of the Company.

31. **Incorporation of Federal Transit Administration (FTA) Terms**. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Company requests which would cause the Company to be in violation of the FTA terms and conditions.

32. **Government-Wide Debarment and Suspension (Nonprocurement)**. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the Contractor certified as follows: The certification in this clause is a material representation of fact relied upon by the Company. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Company, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

33. **Lobbying.** Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

34. **Transit Employee Protective Agreement.** The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b) and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities** - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

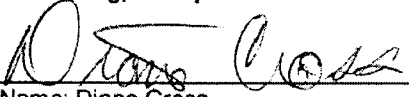
(c) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas** - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

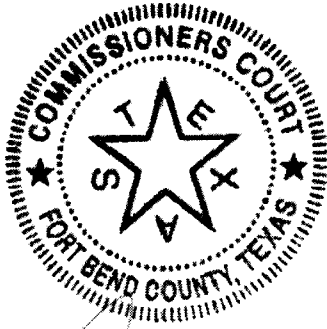
The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

35. **Execution.** This Agreement may be executed in counterparts and a party's facsimile transmittal of an executed signature page of this Agreement shall constitute execution of this Agreement by such party.


Intending to be legally bound, this Agreement is executed below by authorized representatives of both parties hereto.

ParkWest Staffing, Incorporated


By: 
Printed Name: Diana Cross
Title: G.M.
Date: 12-1-10



Fort Bend County

By: 
Printed Name: Robert Hebert
Title: County Judge
Date: December 7, 2010

ATTEST:


Dianne Wilson, County Clerk

- Attachment A: Services and Fees
- Attachment B: Ambassador Job Description and Duties
- Attachment C: Ambassador Training

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$ 364,807.00 are available to pay the obligation of Fort Bend County within the foregoing Agreement.


Robert Ed Sturdivant, County Auditor

ATTACHMENT A SERVICES AND FEES

Pricing by Position:

Ambassador (40% Markup)
Employee Pay Rate: \$9.50 per hour
Ft. Bend County Bill Rate: \$13.30 per hour

On-Site Manager (35% Markup)
Employee Pay Rate: \$12 per hour
Ft. Bend County Bill Rate: \$16.20 per hour
Weekly Bill Rate (40 hours): \$648 per week

Initial Social Services Training

Three day initial training by third party vendor for initial group of Ambassadors and Ft. Bend Trainer is approximately 5,000.

Ft. Bend County RFP states the operating hours for the Transportation services are between 4 am and 10 pm. Initially, our Site Manager will be at work at 5 am to insure that all Ambassadors are at work and on the busses as scheduled for the day. If an Ambassador is out, the Site Manager will service as a substitute Ambassador until a replacement is found. The number of Ambassadors needed and shift times will be determined by Ft. Bend County. ParkWest Staffing will hire and schedule employees to accommodate service levels determined by Ft. Bend.

At the end of the shifts, the Site Manager or an Ambassador lead will make certain that all Ambassadors return to the Ft. Bend office to clock out and to get their schedules for the next day. The lead or Site Manager will call any Ambassadors not working that day to notify them of specific start times for the following day.

ATTACHMENT B - AMBASSADOR JOB DESCRIPTION AND DUTIES

Position of Ambassador Summary and Duties: Ambassadors will work directly with Ft. Bend County clients providing assistance from the rider's door to the vehicle or from the vehicle to the final destination. Ambassadors' assistance will consist of gentle support, such as opening doors and providing verbal guidance. At times they will provide physical support such as assisting passengers with balance problems, climbing steps, handling small packages, or performing similar functions. Ambassadors may provide a "hand-off" service, delivering riders to an attendant. Ambassadors will not be used as drivers. Their function is restricted to the above duties and to assisting clients with agitation, behavioral, and cognition issues and to provide assistance and support to the driver in monitoring behavior of passengers and to prevent distractions. Ambassadors will not be required to drive any vehicles, provide wheelchair or seatbelt securement or operate wheelchair or mechanical lifts or ramping. The Ambassadors will aid with any behavioral issues to assist the driver in maintaining a safe environment on board the vehicles. Ambassadors are also responsible to act as trainer to help mentor riders who are not able to travel independently. They will instruct the rider directly in order to assist in mobility, accessibility and independent travel. They will compile proper documentation related to the travel training for these riders.

Required Skills and Experience:

- ✓ Bilingual a plus, but not required
- ✓ Excellent communications and interpersonal relationship skills with special population
- ✓ Patience
- ✓ Concern for and interest in supporting the elderly and disabled as well as genuine respect for this population
- ✓ Computer familiarity helpful, but not required

Working Conditions and Physical Requirements

- ✓ Work will require bending and stooping, ability to climb stairs, carry small packages and grocery bags up to 20-30 pounds.
- ✓ Ability to push and maneuver clients in wheelchairs
- ✓ May be exposed to the outside elements (heat and cold) when assisting clients to and from the vehicle.
- ✓ Must be able to pass background check and drug test.
- ✓ Must be clean and neat in appearance.

ATTACHMENT C – AMBASSADOR TRAINING

ParkWest Staffing will ensure that all Ambassadors receive initial training that will provide the candidates with the knowledge to accomplish the requirements set forth in the Ambassador Job Description. The Ambassadors will need a comprehensive understanding of the environment they will be working in, the types of people they will be assisting and the challenges that come with helping the riders have safe passage to and from their destination.

The training program was developed by third party vendor and includes training and materials from Houston Centers for Independent Living, Houston Area Parkinson Society, Care for Elders, Mental Health and Mental Retardation Association of Harris County, American Red Cross – Greater Houston Area, United Way of Houston and Harris County RIDES.

The training for the initial Ambassadors will be conducted in a group environment consisting of presentations from the above groups in addition to riding with third party vendor Ambassadors to train all new employees on how to assist all riders including the elderly, the physically disabled and the MHMR riders.

ATTACHMENT D – SITE MANAGER JOB DESCRIPTION

SCOPE AND PURPOSE

The Site Manager is responsible, under the supervision of the ParkWest General Manager for all phases of the operation of the Ft. Bend County Ambassador program for Ft. Bend County Transportation. These responsibilities include, but are not limited to, the general administration of the ambassador program and the direction and control of all personnel and resources to the end that the facility is at all times a stabilized fiscal operation. The Site Manager is responsible for maintaining proper employee standards necessary to meet the customer's needs and expectations. In addition, the Site Manager is responsible for providing ambassador and safety training. The Site Manager will enforce all policies and procedures outlined in the ParkWest manual and supplemental materials.

Duties and Responsibilities as outlined below and all other responsibilities and duties as directed by management:

1. Manage the ParkWest staff and make adjustments to work processes, scheduling, etc. to maintain proper car flow for Ft. Bend County Transportation each day.
 - a. The Site Manager will make a schedule matching the model schedule template provided by the Ft. Bend County Transportation Department each week. The schedule will be completed and posted by 5 pm each Wednesday before the start of the next work week. The current schedule will remain posted through the current work week. The Site Manager will review the schedule model versus the actual schedule to determine if additional employees are required to cover shift needs.
 - b. The Site Manager will review the actual and projected ridership daily and determine if he or she has the proper number of employees to meet the projected numbers without causing a flow interruption for the customer, Ft. Bend County Transportation.
 - c. The Site Manager will spend approximately 25% of the scheduled work week monitoring the performance of Ambassadors to insure that best practices are being followed. The Site Manager will enforce safety, attendance and performance policies and expectations for all employees by providing documented training and progressive discipline including verbal warnings, written warnings, unpaid work suspensions and ending assignments as needed for ParkWest employees who do not follow proper safety procedures, don't follow proper dress code policies, consistently fail to report to work on time, fail to works as scheduled on a timely basis and fail to perform work duties in a satisfactory manner. The Site Manager will enforce the above items and all other items as outlined in the ParkWest Employee Handbook. The Site Manager is required to notify the General Manager before ending an employee's assignment to ensure proper procedures and documentation are followed for all employees.
 - d. The Site Manager is responsible for providing proper work and safety training for all employees at the facility. The Site Manager is required to properly train all Ambassadors on their job duties and expectations as outlined in the lot coordinator duties and fleet assistant duties. To accomplish the training, the Site Manager will work with third party vendor to administer proper training.
 - e. The Site Manager will identify an Ambassador Lead who will be available at the end of shift to complete end of shift paperwork and distribute itineraries for the following day to all employees as they leave.

2. The Site Manager is responsible for communicating and building a positive relationship with the customer, the management and employees of Ft. Bend County Transportation.
 - a. The Site Manager will communicate any staffing issues or other problems with the management of Ft. Bend County Transportation on a daily basis.

- b. The Site Manager will talk to the Area Manager a minimum of one time each day to get feedback on ParkWest performance and to build a relationship with him.
3. The Site Manager is expected to meet all reporting and paperwork requirements for providing schedules, payroll, reporting forms, employee files and paperwork and providing information requested by members of the ParkWest corporate office management and administrative personnel.
 - a. The Site Manager will complete payroll the payroll information by 10 am each Monday and email it to accounting, the accounting department by this time.
 - b. The employee will complete the New Hire and Termination report each week and email it to infor@parkweststaffing.com and copy Accounting Manager by noon each Monday.
 - c. The Site Manager is expected to audit all time cards on a daily basis to ensure employees are working as directed. This includes matching the time cards with the daily logs.
 - d. The employee will complete the schedule for the following week by 5 pm each Wednesday and email to the General Manager after it is posted at the site.
 - e. The Site Manager will complete all current employee files including an attendance calendar and have them in the employee section of the ParkWest file cabinet. He/She will complete new hire files before the start date for each new employee. Previous employee files are to be pulled on the end of the assignment and all paperwork sent to the ParkWest office in the DHL.
 - f. If an employee's assignment ends for non-performance, safety violations, etc., the Site Manager will email all information to the Accounting Manager within 24 hours of the last day of the assignment.
 - g. The Site Manager must notify the General Manager of all employee injuries, accidents and / or disciplinary actions on the date they occur. OX form to Diana at the ParkWest office on the day of the event or the first day he is scheduled to work after an event.
4. The Site Manager is responsible for contacting the Recruiting Manager when an employee gives notice or is in danger of losing his or her job due to misconduct or attendance and punctuality issues.
 - a. The Site Manager will work as an Ambassador to cover shifts as needed on a daily basis to cover for late or missing employees.
 - b. The Site Manager will be on-call during hours of operation and two hours prior to the shift start time each day to be available to take calls from employees missing shifts.

Required Skills and Experience:

- ✓ Bilingual a plus, but not required
- ✓ Excellent communications and interpersonal relationship skills with special population
- ✓ Concern for and interest in supporting the elderly and disabled as well as genuine respect for this population
- ✓ 6 months previous management experience. Non-profit management a plus.

Working Conditions and Physical Requirements

- ✓ Work will require bending and stooping, ability to climb stairs, carry small packages and grocery bags up to 20-30 pounds.
- ✓ Ability to push and maneuver clients in wheelchairs
- ✓ May be exposed to the outside elements (heat and cold) when assisting clients to and from the vehicle.
- ✓ Must be able to pass background check and drug test.
- ✓ Must be clean and neat in appearance.